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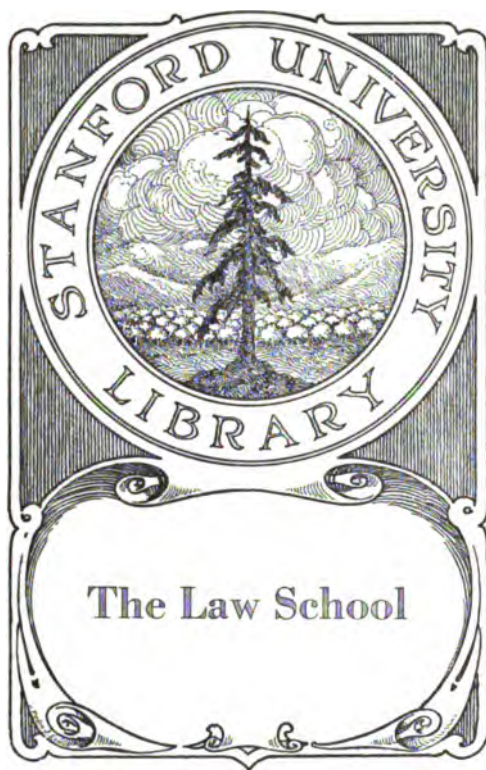
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MISSOURI CAR ASSOCIATION

== 1916 ==





FRANK M. McDAVID
President 1915-1916

REPORT
OF THE
PROCEEDINGS
OF THE
THIRTY-FOURTH ANNUAL MEETING
OF THE
Missouri Bar Association
HELD AT
SAINT LOUIS, MISSOURI
SEPTEMBER 26, 27, 28
1916

SMITH-GRIEVE, LAW PRINTERS, KANSAS CITY, MO

PREFACE.

By order of the Executive Committee, the Assistant Secretary was instructed to print only the minutes of the proceedings of the Thirty-fourth Annual Meeting of the Association, together with addresses delivered at this meeting.

To comply with this order, all discussions of reports of committees, resolutions, recommendations and motions have been eliminated from this volume.

DELL D. DUTTON,
Assistant Secretary.

L 8899

FEB 1934

UNIVERSITY OF MICHIGAN

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OFFICERS AND COMMITTEES.

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GEORGE H. DANIEL.....Secretary
Springfield.

DELL D. DUTTON.....Assistant Secretary
Commerce Building, Kansas City.

A. STANFORD LYON.....Treasurer
Scarritt Building, Kansas City.

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S. OAK HUNTER, Moberly.

GEORGE H. DANIEL, Springfield.

J. M. LASHLY, St. Louis.

A. STANFORD LYON, Kansas City.

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- | | |
|------------------------------------|---|
| 1. JAS. A. COOLEY, Kirksville. | 20. E. P. DORRIS, Oregon. |
| 2. VERNON L. DRAIN, Shelbyville. | 21. E. M. DEARING, Potosio. |
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| 4. JOHN M. DAWSON, Maryville. | 23. GUY D. KIRBY, Springfield. |
| 5. A. D. BURNES, Platte City. | 24. CHAS. L. HENSON, Mount Vernon. |
| 6. THOS. B. ALLEN, St. Joseph. | 25. D. E. BLAIR, Joplin. |
| 7. FRANK P. DIVELBISS, Richmond. | 26. BERRY G. THURMAN, Nevada. |
| 8. HUGO MUENCH, St. Louis. | 27. PETER H. HUCK, Ste. Genevieve. |
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| 10. W. T. RAGLAND, Paris. | 29. C. A. CALVIRD, Clinton. |
| 11. E. S. GANTT, Mexico. | 30. H. B. SHAIN, Sedalia. |
| 12. FRED LAMM, Salisbury. | 31. FRED STEWART, Ava. |
| 13. G. A. WURDEMAN, Clayton. | 32. R. A. BREUER, Pacific. |
| 14. JOHN G. SLATE, Jefferson City. | 33. J. P. FOARD, Poplar Bluff. |
| 15. SAMUEL DAVIS, Marshall. | 34. DAVID H. HARRIS, Fulton. |
| 16. HARRIS ROBINSON, Kansas City. | 35. E. B. WOOLFOLK, Troy. |
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| 18. C. H. SKINKER, Bolivar. | 37. N. M. PETTINGILL, Memphis. |
| 19. LEIGH B. WOODSIDE, Salem. | 38. STERLING H. MCCARTY,
Caruthersville. |

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- | | |
|---|-------------------------------------|
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| 12. ROY W. RUCKER, Keytesville. | 30. R. S. ROBERTSON, Sedalia. |
| 13. A. E. L. GARDNER, Clayton. | 31. J. WILLIAM COOK, Crane. |
| 14. A. T. DUMM, Jefferson City. | 32. JAMES BOOTH, Pacific. |
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| 18. HERMAN PUFUHL, Bolivar. | 36. F. S. HUDSON, Chillicothe. |
| | 37. THEO. L. MONTGOMERY, Kahoka. |
| | 38. H. C. RILEY, JR., New Madrid. |

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ELDON R. JAMES, Columbia.

R. L. GOODE, St. Louis.

E. D. ELLISON, Kansas City.

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DANIEL S. TAYLOR, St. Louis.

LEE MONTGOMERY, Sedalia.

W. M. WILLIAMS

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ROBERT LAMAR, Houston.

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R. L. LAMAR, Houston.

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F. M. McDAVID, Springfield.

C. C. BLAND, Rolla.

JOHN W. HALLIBURTON, Carthage.

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ROY W. RUCKER, Keytesville.

E. L. MOORE, Lamar.

CLARENCE A. BARNES, Mexico.

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ALROY S. PHILLIPS, St. Louis.

SAMUEL M. MAJOR, Fayette.

HOWARD GRAY, Carthage.

GEORGE A. MAHAN, Hannibal.

OFFICERS OF THE MISSOURI BAR ASSOCIATION FROM 1880 TO 1916

<i>President.</i>	<i>Secretary.</i>	<i>Treasurer.</i>
WILLARD P. HALL.	W. H. H. RUSSELL.	M. T. C. WILLIAMS.
1880		
HENRY HITCHCOCK.	W. H. H. RUSSELL.	WM. C. MARSHALL.
1881		
J. H. SHANKLIN.	JAMES E. WITHROW.	WM. C. MARSHALL.
1882		
JOHN C. GAGE.	JAMES E. WITHROW.	WM. C. MARSHALL.
1883		
T. C. REYNOLDS.	JAMES E. WITHROW.	WM. C. MARSHALL.
1884		
GEORGE W. MCCRARY.	JNO. MONTGOMERY.	WM. C. MARSHALL.
1885		
CHARLES G. BURTON.	JNO. MONTGOMERY.	WM. C. MARSHALL.
1886		
JOHN F. PHILIPS.	W. A. ALDERSON.	WM. C. MARSHALL.
1887		
JAMES B. GANTT.	W. A. ALDERSON.	WM. C. MARSHALL.
1888		
GEORGE A. MADILL.	C. CLAFLIN ALLEN.	WM. C. MARSHALL.
1889		
L. C. KRAUTHOFF.	F. M. ESTES.	WM. C. MARSHALL.
1890		
H. S. PRIEST.	R. F. WALKER.	WM. C. MARSHALL.
1891		
GEO. B. MCFARLANE.	W. A. WOOD.	WM. C. MARSHALL.
1892		
ALEXANDER MARTIN.	W. A. WOOD.	WM. C. MARSHALL.
1893		
HENRY C. McDUGAL.	W. A. WOOD.	WM. C. MARSHALL.
1894		
WM. C. MARSHALL.	SELDEN P. SPENCER.	WM. B. TEASDALE.
1895		
No Meetings 1896-1897.		

<i>President.</i>	1898 <i>Secretary.</i>	<i>Treasurer.</i>
SELDEN P. SPENCER.	J. J. RUSSELL.	W. B. TEASDALE.
	1899	
GEORGE ROBERTSON.	J. J. RUSSELL.	W. B. TEASDALE.
	1900	
J. J. RUSSELL.	C. F. GALLenkAMP.	W. B. TEASDALE.
	1901	
W. B. TEASDALE.	C. F. GALLenkAMP.	ADIEL SHERWOOD.
	1902	
W. M. WILLIAMS.	C. F. GALLenkAMP.	ADIEL SHERWOOD.
	1903	
F. L. SCHOFIELD.	R. F. WALKER.	ADIEL SHERWOOD.
	1904	
JOHN D. LAWSON.	R. F. WALKER.	ADIEL SHERWOOD.
	1905	
ROBERT F. WALKER.	R. E. BALL.	LEE MONTGOMERY.
	1906	
SANFORD B. LADD.	R. E. BALL.	LEE MONTGOMERY.
	1907	
R. T. RAILEY.	LEE MONTGOMERY.	R. E. BALL.
	1908	
F. N. JUDSON.	LEE MONTGOMERY.	R. E. BALL.
	1909	
J. W. HALLIBURTON.	LEE MONTGOMERY.	R. E. BALL.
	1910	
J. J. VINEYARD.	LEE MONTGOMERY.	E. M. GROSSMAN.
	1911	
MORTON JOURDAN.	JOHN G. SCHAICH.	E. M. GROSSMAN.
	1912	
RALPH F. LOZIER.	JOHN G. SCHAICH.	FRANKLIN MILLER.
	1913	
EDW. J. WHITE.	GEORGE H. DANIEL.	FRANKLIN MILLER.
	1914	
HENRY LAMM.	GEORGE H. DANIEL.	EUGENE BLODGETT.
	1915	
FRANK M. McDAVID.	GEORGE H. DANIEL.	A. STANFORD LYON.
	1916	
JAMES H. HARKLESS.	GEORGE H. DANIEL.	A. STANFORD LYON.

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SECRETARY

GEORGE WHITELOCK, Baltimore, Md.

TREASURER

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GAYLORD LEE CLARK, 1416 Munsey Building, Baltimore, Md.

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THE SECRETARY	WILLIAM P. BYNUM, Greensboro, N. C.
THE TREASURER	CHAPIN BROWN, Washington, D. C.
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	JOHN LOWELL, Boston, Mass.
	CHARLES BLOOD SMITH, Topeka, Kans.
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Peoria, Ill.	WALTER GEO. SMITH, Philadelphia, Pa.

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JAMES H. HARKLESS, Kansas City

LOCAL COUNCIL FROM MISSOURI

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EUGENE McQUILLIN, St. Louis

WM. M. KINSEY, St. Louis,

JAMES H. HARKLESS, Kansas City

GEORGE H. DANIEL, Springfield

MARTIN LYONS, Vice-President, Kansas City

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Third National Bank Building	
HUGO MUENCH.....	Vice-President
Title Guaranty Building	
DANIEL G. TAYLOR.....	Vice-President
Boatsmen's Bank Building	
CHARLES P. WILLIAMS.....	Vice-President
Security Building	
WILLIAM F. FAHEY.....	Secretary
Third National Bank Building	
FRANK B. COLEMAN.....	Treasurer
Carleton Building	
ROBERT J. KRATKY.....	Assistant Secretary
Third National Bank Building	

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Dwight Building	
HENRY S. CONRAD.....	Vice-President
Scarritt Building	
HUGH M. PINKERTON.....	Secretary
Scarritt Building	
JOHN H. LATHROP.....	Treasurer
First National Bank Building	

OFFICERS OF ST. JOSEPH BAR ASSOCIATION 1916-1917

VINTON PIKE	President
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RICHARD L. DOUGLAS.....	Treasurer

OFFICERS OF SPRINGFIELD BAR ASSOCIATION 1916-1917

E. A. BARBOUR.....	President
DAN M. NEE.....	Secretary
McLAIN JONES.....	Treasurer

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H. T. WILLIAMS.....	President
GEORGE W. BARNETT.....	Vice-President
LEE MONTGOMERY.	Secretary

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Joplin	
FRANK L. FORLOW.....	Vice-President
Webb City	
A. G. YOUNG.....	Treasurer
Webb City	
H. W. BLAIR.....	Secretary
Carthage	

OFFICERS OF THE CAPE GIRARDEAU COUNTY BAR ASSOCIATION 1916-1917

THOMAS F. LANE.....	President
RUSSELL L. DEARMONT.....	Secretary-Treasurer

CONSTITUTION

NAME AND OBJECT.

ARTICLE 1. This Association shall be known as "The Missouri Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice, uphold the honor of the profession of the law and encourage cordial intercourse among the members of the Missouri Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ART. 2. Any person shall be eligible to membership of this Association who shall be a member in good standing of the Bar of Missouri, and who shall be nominated as hereinafter provided. Applications for membership shall be in writing, signed by the applicant, and shall be accompanied by \$5.00 initiation fee, and such application shall be preserved by the secretary among the archives of the Association.

OFFICERS AND COMMITTEES.

ART. 3. The following officers shall be elected at each annual meeting for the year ensuing: A President (the same person shall not be elected President two years in succession), one Vice-President for each Judicial Circuit, a Secretary, a Treasurer, a Council consisting of one member from each Judicial Circuit, which shall be a standing committee on nominations for all officers except the Council; an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be chairman of the committee.

The following standing committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. Legal Education and Admission to Bar.
4. On Association and Legal Publications.
5. On Grievances.
6. On Uniform State Laws.

Each of said committees shall present a written report at the annual sessions of the Association.

A majority of the members of any committee, and also a majority of the Council, who may be present at any meeting of the Association shall constitute a quorum of their respective bodies for the purpose of such meeting.

ELECTION OF MEMBERS.

The Vice-Presidents for each circuit, and not less than two other members from such circuit, to be annually elected, shall constitute a Local Council for such circuit, to which shall be referred all applications for membership from such circuit. It shall be the duty of each Local Council thirty days prior to the annual meeting of this Association to appoint at least one member of the Association from each county in its circuit to attend the ensuing annual meeting thereof; provided, that such appointment shall not preclude any member from attending such annual meeting.

ART. 4. All nominations for membership shall be made by the Local Council of the circuit of the Bar to which the persons nominated belong. Such nominations must be transmitted in writing to the chairman of the General Council, and approved by the Council on vote by ballot.

The General Council may also nominate for membership lawyers from any part of the State.

All nominations thus made, or approved, shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote by ballot upon such name.

Seven nominees, if from the same circuit, shall be voted for upon the same ballot, and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

BY-LAWS.

ART. 5. By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

DUES.

ART. 6. Each member shall pay \$5.00 to the Treasurer, or other person designated by the Association, as annual dues, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided for by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ART. 7. The President shall open each annual meeting of the Association with an address in which he shall communicate any proposed amendments to the Constitution of the State, the most noteworthy changes

in the statute law on points of general interest made in his and other States and by Congress during the preceding year or such other matters of current interest as he may deem of value to the Association.

ANNUAL MEETING.

ART. 8. The Association shall meet annually, on a day to be fixed by a by-law of the Association, at such a place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. It shall be the duty of the Executive Committee to select a place at least two months prior to such a meeting, and to require the Secretary to notify every member thereof, by mail, within one week after such selection.

AMENDMENTS.

ART. 9. This Constitution may be altered or amended by a vote of three-fourths of the members present at any meeting, but no change shall be made at any meeting at which less than thirty members are present.

BY-LAWS

MEETING OF THE ASSOCIATION.

I. The Executive Committee, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six members of the Association to read papers.

II. The order of exercises at the annual meeting shall be as follows:

- (a) Opening address by President.
- (b) Nomination and election of members.
- (c) Election of General Council and of the Local Council.
- (d) Report of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Report of Standing Committees in the order named in Article 3 of the Constitution.
- (g) Report of Special Committees.
- (h) Nomination of Officers.
- (i) Reading of papers provided for in Section 1 of the By-Laws.
- (j) Miscellaneous business.
- (k) Election of Officers.

The address to be delivered by a person invited by the Executive Committee shall be made at the morning session of the second day of the annual meeting.

III. No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed by the Executive Committee at each annual meeting.

IV. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and all proceedings of the annual meeting shall be printed; but no other address made or paper presented shall be printed, except by order of the Committee on Publication, who shall furnish one hundred copies separately bound of every paper or address published to the author thereof.

OFFICERS AND COMMITTEES.

V. The term of office of all officers, including the Council, elected at an annual meeting, shall commence at the adjournment of such meeting.

VI. The President shall appoint all committees within thirty days after the annual meeting, and shall announce them to the Secretary; and the Secretary shall promptly give notice to the persons appointed. The General and Local Councils and all Standing Committees shall have authority to fill all vacancies existing and occurring in their respective bodies.

It shall be the duty of every committee who has any work to do of any kind, between meetings, to report their action to the Secretary, and thirty days before each annual meeting it shall be the duty of the Secretary to communicate, promptly, in the form of bulletins, all of that action to the members.

VII. The Council and Standing Committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint.

VIII. The Committee on Publication shall also meet within one month after their appointment, at such time and place as the chairman shall appoint.

IX. Special meetings of any committees shall be held at such times and place as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

X. The annual dues shall be payable in advance, at the annual meeting each year. If any member makes default in the payment of his annual dues, the Treasurer shall give such delinquent notice of this by-law by circular, mailed to his address, as shown by the roll of members in the office of the Secretary, at least thirty days before the next annual meeting, and if any delinquent shall fail to pay such dues before the commencement of the annual meeting next after such default, he shall stand suspended, and shall not thereafter be qualified to exercise any privileges of membership until all arrearages shall be fully paid. No person who has heretofore forfeited his membership in this Association, by reason of non-payment of dues, shall be nominated for membership by the General Council, or by any Local Council, until all past arrearages of dues that accrued prior to his suspension have been fully paid. The names of all who have heretofore forfeited their membership by non-payment of dues, and of all members who shall be suspended for non-payment of dues, by virtue of this by-law, and who shall continue to neglect to pay such dues until the proceedings of the annual meeting next after such suspension have been compiled for publication, shall be, by the Treasurer, dropped from the published list of members of the Association.

Any member of this Association against whom no charges are pending, and whose annual dues are fully paid, may terminate his membership

by filing with the Executive Committee a written resignation, and said Committee shall report the names of the members so resigned at the next annual meeting.

At any time the Executive Committee may reinstate any person whose name has been dropped from the roll of membership, or relieve any member from the payment of delinquent dues, upon such terms as to the Committee may seem just.

XI. At any of the meetings of the Association, members of the Bar of any foreign country or of any State, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

ANNUAL DINNER.

XII. The Executive Committee shall provide at each annual meeting a suitable reception and dinner, to be given at the expense of the Association, at which dinner each member of the Association may be accompanied by one lady.

LEGAL BIOGRAPHY.

XIII. The Committee on Legal Biography shall consist of five members, of whom the Secretary shall be one. The remaining four members shall be appointed by the President within thirty days after each annual meeting. It shall be the duty of this committee to collect and provide for the preservation, among the archives of the Association, of suitable written or printed memorials of the lives and characters of its deceased members, and to make the report thereof at each annual meeting.

ANNUAL MEETING.

XIV. The Association shall meet annually, at such times as may be designated by the Executive Committee.

RULES OF PROCEDURE.

XV. The proceedings of all of the meetings of the Association shall be governed by the rules contained in Cushing's Manual.

XVI. There shall be a standing committee of this Association to be known as the Committee on Constitutional and Statutory Amendments, which shall be constituted as other standing committees are constituted, whose duty it shall be to consider all amendments to the Constitution and statutes of this State, and to prepare bills and present them to the Legislature along lines of legislation recommended by this Association, and it shall be their duty to prepare and recommend such bills to the proper notice of the Legislature at the first meeting of the Legislature after such recommendations by the Association, and shall report their action to the next meeting of this Association.

XVII. The retiring President, together with such other delegates as the President may appoint annually, shall be the delegates from this Association to the American Bar Association.

REPORT OF PROCEEDINGS

OF THE

THIRTY-FOURTH ANNUAL MEETING

OF THE

Missouri Bar Association

TUESDAY, SEPTEMBER 26TH, 10 A. M.

MORNING SESSION.

The meeting was called to order in the Mercantile club rooms, St. Louis, Missouri, by Senator F. M. McDavid, President, at 10:00 a. m.,

THE PRESIDENT: Brethren of the Bar, I think the first duty, judging by the difficulty I have in restoring or procuring order, is to appoint a sergeant-at-arms. I am going to appoint our brother Oak Hunter, of Moberly, and ask that he stand up that the brethren may look at him.

Now the programme this morning, gentlemen, is not extensive, but I am sure it will prove to be interesting. I want to say to the gentleman whom I shall now call on for the address of welcome that while he hasn't a large body of men to address, yet he has the quality here to speak to. I now take pleasure in introducing to you the Honorable Frank A. Thompson, of the Bar Association of St. Louis, who will tell you whether or not you are welcome, and how he is going to prove that you are welcome. (Applause.)

MR. THOMPSON: Mr. Chairman and Gentlemen: An address of welcome should, of course, be very brief, and yet it should be very fervent, for the welcome extended from lawyers to lawyers is a most genuine one. It comes straight out of the

heart. I thank you, Mr. President, for the honor which you have conferred upon me in asking me to extend this welcome. Any honor conferred upon me by the members of my profession, I prize most highly for I say to you out of my very soul I would rather have the confidence and the kindly feeling of my fellow members of the Bar than to have all of the gold and silver in Christendom. The position which comes with that estimate is, to my mind, the most enviable one in society. It is a position which cannot be purchased. It can only be attained by honorable men, and is a real position in the aristocracy of brains.

Men, we welcome you to St. Louis, the metropolis of this great and growing West. If you say she has builded slowly, we answer yes, perhaps she has builded slowly, but she has builded beautifully, firmly and eternally. We have here represented the spirit of every part of America and these blended into one make our people, we think, the most hospitable and the best people in the world. We have here represented the spirit of the chivalry and courtesy of the South and the energy and industry of the North, the culture and refinement of the East and the growing freedom of the West. St. Louis with this spirit extends to you a hearty welcome. (Applause.)

On this beautiful September morn, the Bar of the city of St. Louis, through me, extends to you the right hand of fellowship. Just as we are proud of our city, so also are we proud of the personnel of our Bar. I say to you with all candor that I believe the Bar of the city of St. Louis is the peer of any in the country, not, possibly, so much for learning or for business and legal ability, but for those higher and better things which make our profession noble. In ethics, in character, in courtesy and kindly demeanor we yield to none. We are proud of our profession, and we have a right to be. Lawyers have always been the leaders of the world and always leaders for good. Most of our presidents have been lawyers, most of our senators and representatives have been lawyers, most of our governors have been lawyers, and it is the spirit and the influence of the lawyers which have always guided the destinies of this nation, this state and this city. Then wherever in this broad land there has gone out

the call for a man to fill any position of great trust, invariably a lawyer has been called to the task, because it has been shown time and again that it is the lawyer who best fulfills both public trust and private trust. In that spirit, we of the city welcome you from out of the city. We know you and we have confidence in you and we trust you. You come to us representing the flower of every county in this grand old state of ours. From an actual contact with you in the forum, we have a wholesome respect for you and for your ability; because you are the leaders of your communities, we admire you; because of the noble profession which you adorn, we love you as brothers in the bond should love, and we open to you our city, our homes, our offices, our courts, our clubs, our libraries, and anything that we have, and we hope that your stay with us will be a pleasant one and will result in much good, and we trust it will give you as much pleasure to be our guests as it will give us to be your hosts. (Applause.)

THE PRESIDENT: The response to this address was to have been given by Mr. W. W. Frye, of Mexico, who is detained at home in the trial of a case, but I am happy in being able to furnish a substitute for him, who is always ready and always effective. I intended to use him on another theme, but he is like a senator with whom I served in the legislature—he came in one day a little bit overseas and we were working over various bills and he arose and addressed the chair and said, “Mr. President, I desire to be heard on Senate Bill No. 69,” and the president of the Senate replied, “Senate Bill No. 69 has just been passed and is not now debatable.” “Then,” said my friend, “what is the number of the next bill—I desire to speak on that.” (Laughter.) So this gentleman is always ready, and I am going to ask and caution him not to say too much about Kansas City. Hon. James H. Harkless, of Kansas City. (Applause.)

MR. HARKLESS: Mr. President, and gentlemen of the Bar Association: If there is anything in this world that I am at home in doing it is replying to an address of welcome, because it has been said that a man to reply to an address of welcome has nothing to do but to say Amen. Now I am a little surprised at

the statement the President made a few minutes ago when he referred to the gentleman who was confused or "infused" in the legislature. I am surprised that McDavid would make such an admission, because he was there one time until they drove him out. Much more am I surprised that he should refer to me in connection with the matter. We haven't taken but two drinks this morning together, and there is no excuse, Mr. President, for such a statement as that.

Now we gentlemen from the country—of course, being from Kansas City, I speak of it modestly—we are making no pretensions of being the metropolis, as Mr. Thompson has said, but we will defer that until you come to our city and then we will tell you that same thing about our city that he has told concerning St. Louis. We always do that. Now I had supposed that McDavid himself would reply to this welcome address because he assured me this morning at the hotel, after I had questioned the propriety of his calling upon anyone else, he said, "Jim, I will tell you why it is not appropriate for me to do that. I am the President of the Bar Association and there has gotten to be a habit lately of the Presidents of the Bar Association becoming candidates for governor, and I really expect"—no, I don't know that he said that, exactly, but something like it—he thought it would be improper for him to advertise his candidacy this far in advance. I was also reminded of a thing this morning with reference to the Bar Association, and it was suggested to me by my friend Johnson, who was nominated for Supreme Court judge and thinks he is running. He told me something about the Bar Association this morning that you gentlemen ought to know. He said, "I beat my opponents nearly 12,000 votes and after figuring it over I now know that it came from the intelligent part of the community—the lawyers of the state." Now can you beat that? (Applause and laughter.) I speak of this because it is a compliment to the bar. Of course, when he speaks of 12,000 lawyers having supported him, I am somewhat confused myself. (Laughter.)

But, gentlemen of the bar, on behalf of the Bar Association of the state and in response to the welcome extended by Mr.



JAMES H. HARKLESS
President 1916-1917

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Thompson, of St. Louis, in an oratorical style which I cannot imitate, I desire to say that we appreciate keenly the kind invitation extended. We have witnessed in your streets this morning a parade; the soldiers returning from Mexico, and it instills patriotism into the hearts of all men—and the other patriotic soldiers of the country are the lawyers. (Applause.)

I trust, gentlemen of the Association, that you will be able to intelligently handle the questions that will come before you during this meeting. Some important questions with reference to remedial procedure in the state will be discussed by this Association. While we may not all be able to agree on one report, yet I believe that all of us will come to one conclusion that will reflect credit upon the Bar Association and will impress itself upon the legislature of the state. (Applause.)

Mr. President, inasmuch as you reminded me that I should not talk too long, I shall act upon your advice. I do not know where the next meeting of this Association will be. If it should happen that it comes to Kansas City, we will talk to you about the only metropolis when you get there. I thank you, gentlemen. (Applause.)

THE PRESIDENT: Now about that governorship, I want to say, in the language of Champ Clark, that they might go further and do worse—and I think they will. (Laughter and applause.) We will now hear from the Honorable James C. Jones, President of the Bar of the city of St. Louis, who will explain in detail, so far as he desires, the arrangements and plans for the coming meeting.

MR. JAMES C. JONES: Gentlemen of the State Bar Association: The City Bar Association has arranged to give to visiting members today, and also the members of the city bar, the privileges of the Mercantile Club during your stay in our city. That will entitle you to use any part of the club that you desire to use. On the second floor is a reception room, and the social and reading rooms; the third floor, billiard and smoking rooms; the fourth floor is, during the day, reserved for ladies; the fifth floor is at your disposal for these meetings, and on the sixth floor is the

dining room. If you desire to eat here, drink here, or smoke here, all you have to do is to sign the ticket which you find about on the tables, with your name. You need not bother about your address because the cards issued to you have a stub that contains your address, and after the meeting is over you can pay at the office on the second floor, if you desire, or, if you prefer, just go on about your business and a bill will be sent to your home town so that you need not be bothered if you came to town short of money. We have undertaken to provide for you in every way that we can think of, and we will continue that effort. (Applause.) This evening at 8 o'clock there will be a reception on the fourth floor of this building, which is the floor ordinarily reserved for the ladies, but we will guarantee to shoo the ladies out before you get in this evening. This is merely a "get together and get acquainted" meeting. We will have something to smoke down there, for those who wish. We don't intend to have any speaking, but simply want the country members to get acquainted with the city members. Tomorrow at noon, I am asked to announce, Judge Clayton, of Alabama, will address the members of the Mercantile Club, on the sixth floor, and all of you, of course, are invited. That is one of the privileges of the club during your stay here. At four o'clock tomorrow afternoon, we are going to take a boat at the foot of Vine street, immediately east of here—seven blocks to the river and one block north. The boat will leave there at four o'clock, or a little after four, so if your meeting adjourns at four you will have ample time to get to the boat. We ride up to the Chain of Rocks, where there is a new club, recently built, called "Riverview." There you will have dinner and after dinner "The Seven Ages of Lawyers," for which our friend Douglas Robert and some other friends are responsible, a musical allegory, will be presented. About 10:00 or 10:30, we will come back on the boat and land at the same place where you get on. I will be glad if every gentleman who will go on the boat trip will sign a card, that will be distributed to you during the morning, in order to know how many guests we will have at the Riverside Club. The next day, the sessions proceed at 10:00 and 2:00, as usual, and the usual banquet at 7:00 in the evening.

I think that completes all the arrangements we have made. Our purpose has been to arrange our entertainments so as to interfere in the least possible way with your deliberations here during the day. The entertainment trespasses upon your time simply for one hour tomorrow afternoon, assuming that you don't desire to hold any night sessions. I want to repeat again that we are prepared to make your stay here as pleasant as we know how, and if there is anything that has not been provided, if you will advise me or any member of the St. Louis Bar Association, we will undertake to supply it. (Applause.)

THE PRESIDENT: I will call on the Secretary, Mr. Daniel, for any announcements he has to make.

MR. DANIEL: I request that all the members from the city and country, including Kansas City, be sure to register and also see that you are provided with a card that entitles you to the privileges of the club. These cards are to be given only to those from the country. The city members are looked after by the St. Louis Bar Association.

THE PRESIDENT: Now the programme calls for us to begin at 2 o'clock, and I want to say we will begin at 2 o'clock whether there is one here or one hundred, because we have a great deal of work before us; and I want to announce further that if we get through with the programme we have arranged for this afternoon so that we can take up the report of the Special Committee on Legislation and Remedial Procedure, we will begin on that just as soon as we finish the afternoon programme, in order that we may devote sufficient time to a consideration of that very important report. This is all the programme we have this morning, and unless some member has an announcement to make or a suggestion, you may consider yourselves in recess until 2 o'clock this afternoon.

MR. E. C. BUETER: I have been requested to say for Mr. Jones that he is authorized to extend to all the members of the State and City Bar Associations the privileges of the Century

Boat Club, during your stay in the city. The location is 5500 South Broadway. (Applause.)

Adjournment for noon hour.

TUESDAY, 2 P. M.

AFTERNOON SESSION.

THE PRESIDENT: I have been requested to announce that the reception to be given tonight will be in this room, instead of on the fourth floor as announced this morning.

It has been suggested that we have report at this time from the General Council. I think that body has had a meeting and has passed on the applications of certain gentlemen for membership. The committee will report through its chairman.

JUDGE R. T. RAILY: The Secretary has the report.

SECRETARY DANIEL: The Committee of the General Council reports favorably upon the following applications for membership:

AILWORTH, R. L., 1224 McCausland, St. Louis.
ANDERSON, ROSCOE, Third National Bank Bldg., St. Louis.
BAILEY, RALPH E., Sikeston.
BARON, DAVID, Boatmen's Bank Bldg., St. Louis.
BIGGS, DAVIS, Pierce Bldg., St. Louis.
BOISAUBIN, VINCENT L., Third National Bank Bldg., St. Louis.
BREWSTER, ARTHUR T., Poplar Bluff.
CAULFIELD, HENRY S., Third National Bank Bldg., St. Louis.
CHANDLER, ALBERT, Rialto Bldg., St. Louis.
CLARK, HARVEY C., Nevada.
CRITES, JOSEPH J., Rolla.
CUMMING, A. S., Bethany.
DAME, JAMES E., Central National Bank Bldg., St. Louis.
DEARMONT, RUSSELL L., H. H. Bldg., Cape Girardeau.
DUMM, A. T., Central Trust Bldg., Jefferson City.
ELLERBE, CHRIS P., Third National Bank Bldg., St. Louis.
FORDYCE, S. W., Jr., St. Louis.

FRANK, D. A., Boatmen's Bank Bldg., St. Louis.
 GOODMAN, BURR S., Title Guaranty Bldg., St. Louis.
 GREENSFELDER, JOSEPH B., Clayton.
 HAID, ARTHUR E., Frisco Bldg., St. Louis.
 HALL, FRED S., Central National Bank Bldg., St. Louis.
 HARDESTY, BENSON C., First National Bank Bldg., Cape-Girardeau.
 HIGBEE, EDWARD, 515 South High, Kirksville.
 HUTTON, JOHN G., New York Life Bldg., Kansas City.
 IRLAND, FRANK W., Railway Exchange Bldg., St. Louis.
 IRWIN, WM. C., Jefferson City.
 JANUARY, M. T., First National Bank Bldg., Nevada.
 JONES, FRANK X., 3 Kingsbury Place, St. Louis.
 KELSO, I. R., Railway Exchange, St. Louis.
 KISKADDON, J. C., Clayton.
 LAKE, EDWARD W., Third National Bank Bldg., St. Louis.
 LEHMANN, SEARS, Merchants-Laclede, St. Louis.
 LEVI, ABRAHAM L., Third National Bank Bldg., St. Louis.
 McCLARIN, WM. H., Carleton Bldg., St. Louis.
 McCLINTOCK, W. S., Republic Bldg., Kansas City.
 McCULLEN, EDWARD J., Municipal Courts, St. Louis.
 McKAY, JOHN T., Kennett.
 MARBURY, BENJ. S., Liberty St., Farmington.
 MASON, J. H., 1207 North Jefferson, Springfield.
 MAY, ROBERT A., Louisiana.
 MAYFIELD, W. C., Lebanon.
 MOHR, FRANK A., Third National Bank Bldg., St. Louis.
 MORRIS, ARTHUR H., Wainwright Bldg., St. Louis.
 MUNGER, O. L., Piedmont.
 NEWTON, CLEVELAND A., Security Bldg., St. Louis.
 PLASTER, W. H., Collins.
 RALPH, RICHARD F., Clayton.
 ROACH, SID C., Linn Creek.
 ROEHRIG, EMIL, Warrenton.
 ROSENBERGER, EMIL P., Montgomery City.
 SCOTT, RUFE, Galena.
 SEIBERT, WILSON W., Bank Commerce Bldg., St. Louis.
 SHEPARD, C. G., Caruthersville.
 SHEPLEY, ARTHAS B., Security Bldg., St. Louis.
 SILVERS, E. B., Butler.
 SPALDING, ELLIOTT, German-American Bank Bldg., St. Joseph.
 SPRADLING, ALBERT M., Jackson.
 THOMAS, SPENCER M., Pierce Bldg., St. Louis.
 VIERLING, FRED'K, St. Louis.
 WALKER, LEE, Columbia.

WARD, R. L., Caruthersville.
WELBORN, A. T., Bloomfield.
WHITE, J. T., Landers Bldg., Springfield.
WHITESIDE, JOHN A., Hiller Bldg., Kahoka.
WRIGHT, CHARLES J., Landers Bldg., Springfield.
ZIMMERMAN, ORVILLE, Kennett.

Moved and seconded that the report be received and that the recommendations of the committee be ratified. Carried.

The President, Hon. Frank M. McDavid, of Springfield, then delivered his annual address, as follows:

Brethren of the Bar:

For many years the rules of this Association required that its President should, at its annual session, deliver an address, and therein review current legislation. This rule was abolished some time ago, and now the privilege is accorded to that official, in preparing such address, to gather flowers from any field, to fish in any water. Whether the abandonment of the rule requiring a review of current legislation was due to its ever increasing volume and the consequent labor in reviewing it and in listening to such review, or whether the change was due to an opinion, entertained by the members, that such current legislation, because of its great volume and of its character, was no longer of first importance, I do not know. My only regret at this moment is that the Association did not, when it discontinued such review, also abolish the address. I had not entertained this view until now, but am persuaded that it would be a good thing for me and, at least for the purposes of this occasion, for you.

I shall not present to you any abstract theories concerning the law of other days nor of present law. My theme shall be, not of Law, but of the Lawyer; not a lawyer's relation to Cases, but to the Public. "The Lawyer and the Public" will therefore be the subject of these remarks.

There is, and for some time has been, abroad in the land a feeling, shared by some lawyers with whom I have talked, and having some foundation in fact, I fear, that the relations between the Lawyer and the Public are not so close and cordial as they once were, nor as they ought to be. It is the opinion in many quarters, and this opinion is shared by many well thinking people, that lawyers as a class have not made progress with the times, nor kept up the high and exalted standard in the discharge of their duties as lawyers, formerly by them maintained and enjoyed.

If this be true, and I am going to assume that to a degree it is, then it becomes of first importance that we should ascertain the cause, locate the difficulty, fix responsibility, and apply the remedy. It will not do to say that we are indifferent to public opinion, for this would not be true. No doubt it is a credit to us if we may truly say that we shall refuse to yield a principle or surrender or limit a client's rights because of public clamor. Yet at the same time we owe it to the public and to ourselves to meet in the open forum the rising tide of criticism and correct if we may certain false impressions, certain fallacious theories, and if at any point in such consideration and discussion we find that there is merit in any of the criticisms offered as to the methods by us employed, forms of practice which now prevail, or as to professional conduct, we should be willing, even glad, to lead in an effort to set things right. If the law is to be respected, and by the respect shown to the law a people may be judged, then it is the duty of all good citizens, and especially that of lawyers, to do their full share in seeing to it that the law shall represent and be responsive, not to the whims and caprices of an inflamed judgment, but to the present needs and desires of a sober and thoughtful people. It is true, now as always, that the law must meet the needs of our people and be responsive to their ideals or its power is lost. By this I do not mean that courts and lawyers should seek to bend the law to catch a favoring breeze, for this would destroy all law and result in anarchy, but "the law is essentially a progressive science, and its structures and the rules of procedure must continue to change as required by new conditions of society."

Changing conditions of the present time bring forward new questions which are constantly arising and not hitherto dreamed of. These questions must be answered. These conditions must be met. They cannot be met by denying that they exist, but they must be met by the sober, serious thought of men able to grasp the propositions involved, and to apply the doctrines of the law as it now exists and applicable thereto, or if there be no law to meet the situation, then it must be created or amended so that at all times and under all circumstances the law shall keep step with the progress of our day and time.

Lawyers are by nature and by training conservative. They have always acted upon the well-known principles that he who advocates the necessity of a change in the law and in its rules of practice has placed upon himself the burden of showing the necessity for that change, and this seems well enough, but I doubt if we should carry the principle so far as to insist in all cases that the proof of such necessity be beyond all reasonable doubt. The spirit of the age is

one of progress. In every department of human endeavor we find it so, and the rules of the law and its methods of administration, aside from substantive law, which remains essentially the same, should keep step with the progress of the world. This principle and its rules of application are very clearly stated by Mr. Justice Holmes, who says:

"Imitation of the past, until we have a clear reason for change, no more needs justification than appetite. It is a form of the inevitable to be accepted until we have a clear vision of what different thing we want. Doubt as to the value of some of these rules is no sufficient reason why they should not be followed by the courts. Legislation gives notice at least if it makes a change."

WHAT IS THE CAUSE OF CRITICISM BY THE PUBLIC OF THE LAWYER?

The restless spirit of the people in the last two decades has been characterized by a ruthless assault on all forms, precedents and institutions. At such a time and under such circumstances it is but natural that lawyers, leaders as they have ever been in affairs of government and in an orderly procedure, and being responsible in a way for the rules of practice and the administration of the law, should come in for more than a fair share of such criticism. In this crusade against the established order of things our people have sometimes been led by those who in their self-appointed leadership were serving selfish ambition and seeking to promote their own interest.

With the assaults of the demagogue, and as to his opinion of us and our work, we need not give ourselves concern. The steady balance of public judgment will not be permanently disturbed by his outcry. Silence is the best answer which can be made to him, for he feasts on controversy and courts a quarrel. The difficulty is that there may be those among the public some fair-minded people, and I think there are some, who have been influenced by this outcry, and who sincerely believe that evils exist and that the bar as a whole is at fault and is responsible for them. Honest criticism should always be welcomed. It often is an aid and tends to promote progress. No reasonable man would object to it, and members of the bar, schooled to controversy and to self-control, would be the last to object to reasonable criticism. The lawyer's place in history is secure. The part which he has played and the work that he has done are written large upon the constitutions and statutes of all civilized countries, states and municipalities. He has given ungrudgingly of his ability and energy, managing, conserving, promoting and leading in the affairs of this and other countries. In the wise solution of the tremendous problems of the past he has played a

conspicuous part. No eulogist is needed in his behalf. No figures need to be cited or argument made to that end. His work and deeds are emblazoned upon the scroll of our country's glorious history and in the judicial decisions of all our commonwealths. All thoughtful men recognize that there have been few periods in this country's history when more great, vital and important questions were presented for solution than now. They have come to us as a part of the progress of our time. They are the outgrowth of modern development, modern industry, and, in some degree, of conditions over which we have no control, and for which we are not responsible, but these conditions and the questions arising from them must be met. In their proper solution and determination the lawyers of the country will, as always, have a conspicuous part. These questions must, as President Wilson has well said, "be solved with the aid of the lawyers, to their credit, or without their aid, to their discredit." How important, then, for our state and national welfare it is that the lawyers of the country, to whose trained minds our people must in a large measure look for guidance in the crisis now here and just ahead, shall enjoy in full degree the unshaken confidence of that great tribunal known as the public.

It is true that prominent public men have at times delivered assaults upon the profession, but they have ordinarily produced little harm. For instance, a distinguished American statesman said of us: "No people have permanently amounted to anything whose only leaders were clerks, politicians and lawyers." I am not inclined, however, to regard seriously this broadside, for the reason that this gentleman now, when put to the test, seems to favor, in connection with the management of the great affairs of this great country, one trained in the law rather than one trained along other lines. The criticism, however, shows that even from high places and from prominent individuals there come from time to time severe criticisms of the lawyers of the country.

WHAT OUGHT A LAWYER TO BE?

He should be a man of upstanding character, of high ideals and noble purposes. He should be learned in the law, thoroughly grounded in its great underlying principles. He should be fearless and unafraid, able to pursue the even tenor of his way and the plain path of duty, regardless of the frowns or smiles of the public. He should be true always to his client's cause, and if it be a desperate one, wherein public prejudice mounts high and the tide of public sentiment runs strong, he should hold fast and still be true. He should be courteous toward the court, but not fawning; considerate

and fair with his brethren of the bar, but never to the injury of his client's cause. He should charge and collect, where his client can pay, a reasonable fee for services rendered, for the "laborer is worthy of his hire." He should assume full responsibility for his client's cause, and be in full control thereof in the court room and outside. He should not allow his client to make of himself the "wicked partner," on whose shoulders blame can be conveniently laid for the doing of things in the progress of the cause of which the lawyer in person would not be guilty. In other words, he should not so conduct himself as to give the idea that the game may be bagged in any way, no matter how, and yet the hunter escape. He must at all times and under all circumstances be true to the high standard of ethics which we profess, and which for the most part we practice, never allowing good fellowship to blind him to violations of our rules, nor allowing good nature and consideration for his brethren of the bar to condone a serious infraction thereof, and he should work and work and work. Having done these things, all others will be added unto him, and he may enter the ranks of the ideal lawyer. If, in following these lines, criticism comes, he must suffer it, for the man who in a professional career escapes all criticism goes not far.

It ought to be the sincere desire of every lawyer to add something to the profession which is his life work. This for the reason that it should be his ambition that that profession should continue to stand as high in the estimation of good people as when he came to the bar. In truth, it ought to be his purpose to add something to its high standards and to their permanent maintenance and security. It is a healthy sign, and I have often thought of it, that the young man coming into our ranks, if his character rings true, ordinarily selects as his ideal of the true lawyer some great, strong and splendid character who has taken high rank and who represents in his life and conduct the best principles of the profession. The bearing of a really great lawyer among the members of the bar exercises a mighty influence, and especially among those who are just entering upon the work. We have all known such and have loved them. We have looked to them for guidance, and have consciously and unconsciously sought to imitate them in their work and in their relation to this great profession.

We read much and we talk much of the ethics of the profession. After all, these rules and canons are but the consensus of healthy opinion, and a brief of the actual conduct of true lawyers at the bar and at their work. We lay down certain rules for our guidance, because from observation and experience it has been found that the observance of those rules bring greatest honor and greatest success,

because respect for the law and for the accepted and established rules of conduct which should guide in its application at the bar are a strong and dominant trait in the character of any man who may hope to follow successfully the practice of this profession. It should ever be remembered that the law is a profession, not a trade. Our profession, one of the oldest known to civilization and one of the most honorable, must not surrender its high ideals to the commercial spirit of the times. It must not be subsidized by wealth, nor torn from its ancient mooring by the onward rush of a money mad public. It should readjust and reform its rules and methods of procedure, that it may be progressive but without being radical. It should oppose with every energy and resource at its command every attempted wrongful invasion of personal or property rights. Against oppression in every form, though done under the specious plea of pretended progress, it should fight and fight and keep the faith. Its success is not to be measured in the rules of the counting house, but personal interest should be submerged in the interest due to the client's cause. The integrity of the individual must be the basis upon which the security of our profession rests, and the rules which guide us, whether written or unwritten, must be based not on *policy* but upon *principle*, and our conduct must be measured by the unvarying standard of right.

THE LAWYER AND JUDGE.

We are prone sometimes, in considering the practice of law and our relation to the public, to regard lawyers and judges as widely separated; as beings apart; animated by different purposes and striving to different ends. It is not so in fact and should not be so, for in truth judges and lawyers are one and all laboring to the common purpose of administering equal and exact justice. Each must deserve and should receive the respect, consideration and aid of the other. The judge has the right to expect the serious and courageous support of a bold and outspoken bar, and on the other hand the lawyer has the right to demand and receive the courteous attention of the judge, uninfluenced by the age or ability of counsel, or the social or financial standing of his client. We are happy in the knowledge that the judges of our courts, as a rule, are high-minded, honorable, conservative and capable men. Their position makes it impossible for them with propriety to defend themselves against unjust assaults made upon them in ignorance, and sometimes with malevolence. Lawyers are officers of the courts, and for this reason as well as for the further reason that it is within their sphere and a part of their duty, along with the judges to support the law and to administer justice, to fearlessly defend our judges from un-

just attack. The opinion of a judge in a given case may be open to criticism and all lawyers, under all circumstances, must be conceded the right, for it is a vested one, to "retire to the tavern and cuss the court," for often this is the only way to square themselves with clients. But unbridled criticism of the motives of the judges of our courts breeds disrespect for the courts and the bar, and for the law as an institution. Unfair criticism of judges is but unfair criticism of lawyers who for the time being occupy the exalted position of judge, and constitutes as much a reflection upon the bar and upon the practice of law as it does upon those at whom such criticism is leveled.

We occasionally hear or read an intimation that some judge, in an opinion given, has been influenced in some degree by political considerations, either inherent in the cause or growing out of his relations to the parties thereto. I have hardly been able to believe that this has at any time been true. Nothing could be more harmful or more certainly in the end bring the law into disrepute. While under our system, which I think might be improved, judges are necessarily of certain political parties, yet the judge who would on the bench so far forget his official oath as to be influenced in the slightest degree by the political complexion of the case, or the political affiliation of the parties, utterly forgets the character of the high office which he holds, and no lawyer can for a moment look with any degree of leniency or approval upon such a situation. Judges are affected in their work and in their usefulness by the conduct of the members of the bar. On the other hand, lawyers are affected in their reputation and in their work by the conduct of judges upon the bench, for both labor together in a common cause—the administration of justice—and all are equally concerned in knowing that no improper influences or motives shall shape the course of a trial or give color to or become a factor in the judgment rendered. We want no spineless judges; we would not for a moment tolerate a corrupt one; yet a judge, if there be such, that would allow considerations of political affiliations to affect or give color to his opinion would be as bad as either and quite as injurious to the public and to the bar.

Happily we have had in Missouri, and now have, a long line of illustrious, able and honorable men on the bench. The criticism to which I have adverted has been limited in its scope, and I mention it not because I believe that it exists or has existed, but because the criticism has been offered, and further because there ought not, in the very nature of things, to be conditions from or upon which any such criticism may be fairly based. The members of the bar must so conduct themselves that they shall be entitled to the respect and

confidence of the public. Our judges and lawyers must so administer justice so that fair-minded men shall agree that their ideals are high, their motives pure and their conduct beyond fair criticism. This is not to be accomplished by a servile, shrinking attitude toward the public, but by an understanding, courageous and fearless defense of that which is clean and right, and by a prompt and vigorous denunciation of that which is irregular and wrong.

One of the possible reasons for some of the criticism leveled by the public at lawyers is the unfamiliarity which the people as a whole have with the law and with its procedure. Not a large proportion of our people ever see the inside of a court room, and not a large percentage are ever in a lawyer's office or seek a lawyer's advice. Public judgment of us and of our work, therefore, is based not only on what we actually do and say, but on what we are reported as having done and said. In this field, as in all others, the Press of our country is a very powerful factor in molding public sentiment, and I have thought sometimes that the Press has been unfair in that it has not given to the public the lawyers' side of the case, and has overlooked the environment under which he works, and the further fact that the machinery and instrumentalities by which courts are operated and the law is enforced are largely made by statute or by constitutional provision, for which the people, and not the lawyers or the judges, are responsible.

Lawyers are but human—some of us very much so—and we crave the good opinion of the public, not only as individuals, but as a bar. If complaints are therefore made against us, it is due to those making them and to ourselves and to the law itself that we should investigate conditions and make respectful answer.

What are some of the counts in the indictment presented by the public, and what is our plea? And do we deny *generally* or do we *confess* and *avoid*?

There be those, not a few, and they are not limited to thoughtless people, and the feeling is shared by some lawyers, that as a profession we have not maintained that high standard of integrity which formerly prevailed within our ranks. The charge is not general. No one claims that all lawyers are lacking in honesty or integrity, or even that many of them are lacking, but the intimation is that some lawyers do not observe the high standard of ethics which we promulgate, and for which our profession stands. The complaint, bluntly stated, is that we either do not know *how* to clean house, or else that we *lack the disposition or courage* to do so. The charge is, that there are those within our ranks who consistently and persistently do things which are unprofessional and which we brand as being so, and that by our silence and inaction we make ourselves parties thereto, not as participating therein, but as being willing to suffer

from the effects of such conduct rather than give ourselves the trouble and annoyance of clearing our skirts by ousting the offending brother. It is true that though a very small per cent of lawyers disregard the rules which should control our conduct, it affects, and particularly among those who do not discriminate, the whole membership of the bar. There is just ground for this complaint. We have not been as active as we should have been in providing the means whereby we could relieve ourselves of this embarrassing situation. Lawyers in their bearing and attitude toward each other are most considerate. By training and through experience they come to have confidence in and respect for each other. They are careful always and considerate of the feelings of a brother lawyer, and are disposed to treat with leniency the faults of a brother. Little by little this attitude of mind has become characteristic, and probably has made it easy for us to consider too lightly those faults and that conduct which reflects upon the profession. While all this is true, and while we are not without fault, up to this time the means of correcting this condition has either not existed, or was so cumbersome and difficult of application as to make it next to impossible to correct conditions. We have our Local Bar Associations, our State Bar Association and our general committees, but as yet we have not laid the axe to the root of the difficulty. Up to this time we have had no practical or effective law to relieve the profession of those whose conduct brought reproach. It seems strange that this should be true, and yet it is a fact. Various Local Bar Associations have made occasional efforts to punish offenders, but the result has only proved that the machinery provided to that end is wholly impractical in its use and in its effectiveness.

The Special Committee on Legislation and Remedial Procedure has recommended to this body a bill which, if enacted into law, would constitute a vast improvement over present conditions, and I favor it as the best thing in sight. Yet I fear that so long as you depend on local members of the bar to initiate proceedings, and especially since in only a few circuits are there Local Bar Associations, that we shall not obtain the best results. I can conceive of no reason why the lawyers of the state should be less able to control a difficulty of this kind than the members of other professions. Our brethren of the medical profession have accomplished a great work in clearing that profession of unworthy men. So also have the members of other professions in this state. Why can we not do the same thing along the same lines? Is there any reason why a law should not be passed enlarging the powers of the Board of State Bar Examiners, giving authority to initiate proceedings, to receive petitions, to hear testimony and to suspend lawyers from the prac-

tice of the profession in this state, subject to appeal to the courts? A board of this kind, composed of good men drawn from various sections of the state, would be much more effective as a deterrent to evil doers than is the prospect of a possible investigation by the local bar, where so many influences may be exercised and set in motion to prevent a full and complete examination of the facts. It is not pleasant for any member of a Local Bar Association to act on a committee of investigation as to the conduct of one of the fellow members of his bar. It is not pleasant to the judge of that court to order such an investigation or hear it, and considered from any and every angle it seems to me to be a wiser and more effective plan if the whole matter can be made of statewide importance, so that the investigation assumes a broader and a bigger aspect, as if the *whole state* and not merely a *local bar* was interested in and intent upon the enforcement of reasonable rules and regulations in the practice of law. It seems to me that if our Association would put its influence behind a measure of this sort that we could in a short time make rapid progress toward relieving the bar from the evil effects of misconduct, limited to a few members, and I strongly urge that this plan be taken up and considered.

TECHNICALITIES.

A hateful term to many people is the word "technicality," yet I have observed that few object to its employment in their behalf when the same constitutes a defense to an action brought against them. Until we can fairly define the term and determine which of the brood is *legitimate* and which is to be *condemned*, it will be difficult, if not impossible, to legislate against this supposed evil, or control it by rules of practice. It lies often so close to fundamental rights that to deny it, even though there be some who call it a technicality, would be unspeakable. Ordinarily, if it be barren of merit it avails nothing now, and if it has merit the litigant has the unquestioned right to use it. Our courts have made much progress along this line, and it seems that they may be safely counted on to weed out the trouble in a practical way, without further legislative aid, but if we are to move more rapidly and have a clean slate on this subject the legislature over which the public has full and unlimited control is the field for action. The complaints made in respect of technicalities may be considered as well founded in some instances. That a simplified procedure is desirable is admitted on all hands, but the public must not conclude from this that any procedure will avoid all technicalities so-called, because while the technicality which obstructs the even and steady flow of justice should be condemned and abolished, yet if it but keeps that stream within its proper bounds and

course, so that it may not cut up and undermine substantial rights, it serves the people well.

THE LAW'S DELAYS.

This theme we have had with us for a long time. Much has been said and much has been written on the subject. It comes down to us through the ages, and the oldest of us cannot remember when it was not a favored subject among critics of the bar, of the courts and of the law. I am ready to concede that the lawyers of this state cannot possibly escape responsibility in some degree for the congested condition of the dockets of our courts of last resort, and the long drawn out course which it is necessary for litigation to take before final determination in this state. We are not wholly responsible therefor, nor *principally* responsible. Ours is a sin of omission, possibly, more than a sin of commission, for it seems to me that, as officers of the court, engaged actively in the trial of cases and in the making of the very records which have clogged the dockets of our courts, that we ought long since to have devised and submitted to the Legislature a plan whereby this unhappy condition might be avoided. Whatever a simplified procedure will do toward that end it is our duty to provide, for as to that we ought to have peculiar and specific knowledge, that being a subject with which we are presumed to be, and are completely familiar. The lawyers of the state, through this Association, two years ago made certain recommendations along this line. These recommendations assumed the form of various bills introduced into the Legislature, and while defeated by a small vote, yet in fact the vote which they did receive and the support which came to these bills throughout the state, *and especially from the press*, would in and of itself be sufficient justification for us to continue actively our support of at least the most important of these measures. We cannot let this matter alone. It comes before us constantly. The knowledge that it requires so long a time to get a case through the Supreme Court of this state shocks our sense of justice. It must not be understood that by this statement I am intending to criticise in the least degrees the judges of our Supreme Court. The fault is not, in my opinion, to be lodged with them. They are doing, and have been doing, all that can reasonably be expected of them and as I am informed have been and are gradually catching up with their docket. *The fault goes deeper*, and is *fundamental* and lies, among other things, in the *character of records* which are sent to that court, the *character of cases in which appeals are allowed*, the *methods by which our cases are tried*, and the *requirements which we make by constitution of our judges in respect of writing opinions*. The question is squarely home to us. Can we afford longer to stand for such a con-

dition? Will we devise a remedy? Shall we continue to allow the cases to drag as they are now, or shall we rise to the occasion and devise a way whereby business may be expeditiously handled? There is small trouble in the country circuits, and in fact there is not much trouble among the trial courts of this state. Nearly any litigant can have a trial there whenever he wants it, and the delays in these courts are but incidental and sporadic. It is the Supreme Court of the state and the St. Louis Court of Appeals where the chief delay exists, though the Kansas City Court of Appeals has more work than it, in my judgment, should be expected to do.

While it is true that we are not entirely nor largely responsible for the present condition of our dockets, and while it is true that the Legislature is the only place where relief can be given, yet as servants of the law and as members of the bar it seems that the public have a right to expect that we shall be able to devise a plan by which they may, through legislative provision, clear these dockets and put these courts in a position where any litigant may have his cause determined without undue delay. All agree that the present situation is intolerable and amounts practically to a denial of justice, a thing which we *would not think of doing directly* and which, therefore, we *ought not to do, or suffer to be done, indirectly*.

There is another cause for the crowded condition of our Supreme Court docket and one of the prolific sources of delays. It is the ever present question of excessive legislation. This difficulty seems not to be confined to our own state, but is general. On this subject Senator Root in his address to the American Bar Association in 1914 has collected the following facts: "According to a count made in the Library of Congress our national and state legislatures passed 62,014 statutes during the five years from 1909 to 1913 inclusive. During the same five years 65,379 decisions of national and state courts of last resort were reported in 630 volumes. Of these statutes 2,013 were passed by the National Congress, and of these decisions 1,061 were rendered by the Supreme Court of the United States. Many of these statutes are drawn inartistically, carelessly, ignorantly—their terms are so vague, uncertain, doubtful, that they breed litigation unavoidably. They are thrust into the body of the existing laws without anybody taking the pains to ascertain what the existing laws are, what decisions the courts have made in applying and interpreting them, or what the resultant will be when the old laws and the new are brought together. They are made without the true basis for general legislation in the customs and needs of the community to be affected."

Missouri, always a leading state, has kept full pace with others in this matter, as is abundantly shown by the following figures:

During the sessions of the Missouri Legislature for the years 1905 to 1915 inclusive, covering six sessions of that body, there were introduced for consideration of the members 9,665 bills. In the same period a total of 1,496 laws were enacted.

The average number of bills introduced each session is somewhat above 1,500, and of laws enacted 246. Making due allowance for duplications due to the introduction of the same measure in each branch of the Assembly the foregoing figures clearly demonstrate the prevailing tendency here, as elsewhere, toward overmuch law making.

What is the result of all this? Many of these statutes thus hastily thrown together come up for construction in the courts. This requires time. Just about the moment when the law is settled by the courts and the meaning thereof made clear, along comes a legislative amendment and the whole process is again gone over. This necessary construction of new laws passed and old and new laws amended and again amended contribute largely to the crowded condition, particularly of the docket of our Supreme Court. I do not take the ground that we should take action looking to a decrease in legislation, for it is the province and privilege of a free people to legislate on any subject they please, subject only to the limitations of the Constitution, which stands as a barrier—not to *legislation*, but to the *effectiveness* of it. We all know the haste with which much of this legislation is enacted, and that of necessity much of it is inartistically drawn. Many bills are amended during their passage through either branch of the Legislature, with or without consent of the author, carefully or hurriedly, as time may permit and circumstances seem to justify. The law ultimately passed frequently bears slight resemblance to the bill originally introduced. Many of these laws must of necessity be construed, for their meaning as enacted seems doubtful. They can only be construed by the courts of the state, and this adds largely to the burden of work to be done. In this matter the public cannot escape responsibility. The bar is in no wise at fault. While many lawyers are *members* of the Legislature, they are there not as lawyers, but as representative of the public, and whenever the people of the state desire a curtailment of legislation and would to that extent curtail the work to be done by our courts, they will have it, for their chiefest weapon is the ballot, which promptly executes their will.

To illustrate: In 1905 the Legislature amended the Damage Act, and since that time we have had case after case in the Supreme and Appellate Courts seeking to determine, each case differing from the others in its facts, the meaning of that amendment, the character of damages allowed, whether compensatory or penal, and many briefs have been submitted and many pages of our reports con-

sumed in a discussion of the propriety of certain instructions given and refused in cases involving this one amendment. This serves but to illustrate the effect of legislation on the work of the courts, and many other instances might readily be referred to as illustrating the point here brought to attention. The public cannot escape responsibility for this particular situation and this phase of our difficulty, for the *Legislature* and *its work* belongs to it. Nor will it do for the public to say that the Legislature is to blame. I hold no brief for the members of that body, but I do say that the fault of our present system of legislation and the evils which are found therein is not all, or even largely, to be laid at the door of the members of the Legislature. The public pays to each member of the Legislature the beggarly sum of \$5 per day. This is to cover all expenses, including those of the campaign and those at Jefferson City, the latter being always as high as the traffic will bear. The regular session is 70 days. The clerical force employed by that body is of necessity untrained, and must be organized. Much time is lost in these preliminary matters, and these men have left for actual work about forty or fifty days, and in that time they must read, consider and vote upon from 1,200 to 1,500 bills. Conceding that their training fits them for the labor of doing so, what time have they for comparing the proposed with the existing law? How can they iron out the discrepancies, the contradictions and the overlapping statutes? It is a physical impossibility. Speaking from experience, and with some knowledge, I may say that to my mind the wonder is, not that we get so much confusion in our law making, but that these men, considering the conditions under which the work is done, enact as much good and valuable legislation as we have had. It would be more in keeping with good citizenship if the public and some individuals and some of the papers of this state would give aid in a movement looking to the betterment of these conditions, rather than abuse and criticise the members of the Legislature. What can be done? I do not say that we should check the ever increasing tide of legislation. The members of the Legislature in introducing and passing these bills are representing some part of the public, and he would be a bold man who would undertake to curtail the right of the people to make laws on any subject, at any time and of any sort. But relief is needed and something should be done. In the first place it is my opinion that this state should pay to the members of the Legislature a decent salary or per diem. No class of servants in this state are so poorly paid, and yet no class of men are engaged in more important service. So long as the public insists in limiting members of the law-making body to \$5 per day (practically nothing when expenses are paid), so long it may expect that amount of

service. If the salary were enough to justify it these members could and would give freely of their time between sessions, in drafting and perfecting bills, and vastly better results would be obtained. What more important work is there in this state than writing the laws by which a people shall be governed and our great industries controlled and regulated?

And what reason or justice is there in the present policy pursued by the public toward these men who from time to time are elected to perform these most important duties? Just as it is more difficult to write a short opinion than a long one, to write a short and pithy brief than it is to write a long and tedious one, so it is easier for members of the Legislature to write many laws poorly and in a jumbled mass than a few well and carefully considered. If they were paid for the work and could afford to devote their time at home to a consideration of proposed bills, prepare and perfect them, then in a short session, with members thus prepared, there would be in all probability not so many bills, but there would be a vast improvement upon the character of them, their consistency with existing laws and their freedom from constitutional defects. This would accomplish two things. It would result in better laws, and the laws thus made would be more nearly free from those defects and uncertainties which require construction by our courts and add largely to an already overcrowded docket.

There is another way by which the public may relieve this condition. Many men who are in the Legislature are well trained for the work and they do splendid service. There are many others who are wholly untrained and inexperienced in that line of service. They go there without any special knowledge as to the work to be done or the method by which it is to be carried on. It seems to me that there should be created in this state a bureau, possibly consisting of only one person, or two, and it might properly be connected in some way with the State University or the office of the Attorney General, whose duty it should be to draft bills for members of the Legislature or for citizens desiring to have certain bills considered. To see that such bills are in proper form that they can be reconciled with all other laws which they are not intended to amend or repeal. This bureau could keep in mind the laws passed by other states, and constitute itself in a way a bureau of comparative legislation, thus bringing to the attention of the law-making body laws and methods that have been devised by other states, and in a general way make itself useful to the people of the state and to their servants—the members of the Legislature. Clearly this would result in much improvement in the character of laws passed, and the expense of such system would be slight as compared with the benefits to be derived.

REVISION OF OUR STATUTES.

There has been in the past more or less criticism of our statutes, and our revision of them, and while this has come to a degree from the members of the bar, yet it is appropriate at this time to mention it. It will be remembered that in 1919 we are to have what is known as the revision session of the Legislature. At that time, under mandate of the Constitution, that body is to revise the statutes of this state. Would it not be wise that this Association should recommend to the Legislature which meets next January the creation of a Statute Revision Commission, to consist of two men of opposite political views, thoroughly qualified for the work, to be appointed by the Governor, and whose duty it should be to begin work immediately upon appointment and confirmation, and proceed with the work of the revising the statutes of this state and have that work ready for adoption by the Legislature of 1919? Would this not be a practical and sensible way of performing this service? No man who has had to do with a revision of the statutes of this state believes for one moment that the Legislature possesses the facilities or has the time to do such work properly. And again I speak out of an experience which justifies me, I think, in stating that in no other way than as above recommended, or in some kindred manner, can this work be satisfactorily done. If the men appointed were of high character and commanding ability, it is my opinion that the Legislature would accept their judgment, as was the case in the state of New York. They would have no authority to change the substantive law, of course, but could iron out many of the inconsistencies, contradictions and redundancies in our present statutes, recommending the repeal of those laws which have either been destroyed by subsequent statutes or outlived their usefulness, due to changing conditions, and in short give to the bar and to the public a thorough, comprehensive and satisfactory revision of the whole of our statute law. I strongly recommend that some action be taken by this Association looking to the creation of such commission.

Again, there are many things about our present system, and of which complaint is made, and which produces some of the criticisms leveled at the bar, for which we are in no wise responsible, and which neither the members of the bar nor the courts can change because the difficulties are constitutional. We have from time to time in this Association passed resolutions favoring a new constitution. It is not necessary that I should say anything in this behalf, since others will, except to say that as to many of the reforms which have been advocated through the press it will be necessary before they will be possible of accomplishment that we have for this state a new constitution. Our courts have gone the limit in an effort to

meet existing conditions and solve present day problems in the interest of all the people, and within the limits of our present Constitution. They are powerless to do more unless they are willing to violate their oaths and the Constitution, which they are sworn to obey. This condition is squarely before the people of Missouri. Criticism is leveled at public officials for the doing of things required by the plain mandates of our organic law. If this law is to be changed, and probably it should be, it must be done by the sovereign will of a sovereign people, and not by the lawyers of the state, nor by the judges of our courts, nor by the public press, but in an orderly and constitutional manner.

I draw your attention to another fact: We talk much and fluently of the law's delays, of technicality in trials, of cumbersome procedure, of misconduct of lawyers and of the frailties of judges, but there is an evil which in its pernicious effects causes more miscarriages of justice and has a more baneful influence upon the law as an institution than all others combined, and that is perjury committed in the trial of cases. It is a crime. It is difficult to trace, hard to prove, and yet often apparent. It may be committed in a case, and the lawyer whose cause profits by it may not know it. If it be a case or a defense based on perjury he ought to know it, for it is difficult to conceive how a case or a defense could be constructed with perjury as a base, absent active aid or guilty knowledge on the part of the lawyer. Juries are deceived by it, or seem to be. Trial courts hesitate to grant new trials because of it, for clear proof is sometimes lacking, though suspicion be strong. Our appellate courts under existing law must hold their noses and affirm because they cannot weigh the evidence. Statutes piled mountain high with penalties annexed will not reach it. The bar can do little except to procure the disbarment of a lawyer who abets, aids, incites or encourages it. Trial courts could alleviate conditions, and some do, by granting a new trial in any case where it appears. If appellate courts were given power to reverse a case on first appeal on the weight of the testimony it would help much, but this would be an unpopular law because leading to delays. I confess myself unable to suggest a remedy. Others may be able to do so, but this I know, that it is the one outstanding evil and corrupting influence in the presence of which all others pale into insignificance. It knows no law, respects no persons, levies tribute upon all alike, and poisons the stream of Justice at its source.

SYNDICATED LAW PRACTICE.

There has grown up in some sections of this state in the last few years what I term "Syndicated Law Practice." That is to say, a lawyer

who makes a specialty of damage suits, establishes branch offices hard by railroad centers and factories and other industrial plants and puts into these offices, under salary and with a good expense account, a man, sometimes a lawyer and sometimes not, whose duty it is to be present as soon as possible after the accident or death, and present in glowing terms to those persons having a right of action, the ability of his chief and recount the large verdicts procured and favorable settlements made by him. In some instances these agents have no offices, but are under pay and with an expense account, and float about in the community with their ears to the ground for a possible case. In many instances they go further, and as an inducement to securing the case they agree to advance all costs and expenses of every character, and assume full charge and control, relieving the bereaved ones of all care and responsibility in connection with preparation for and the trial of the case. I do not decry damage suits. They have become a very important branch of the law and their consideration and disposition fill many pages of our Reports. The bringing of damage suits is perfectly legitimate, and ought not to be discouraged where there is a meritorious case, nor is an early or a pernicious activity by claim agents in such cases to be defended. However, the method as above detailed of procuring these cases seems to me to violate every rule of ethics, written or unwritten, of which I have knowledge. This business, it seems to me, should take its natural course and find its way to the offices of various lawyers well able to care for it, as other business does. I speak of it the more frankly and openly because I have slight personal concern except in the defense of such suits, and it is all one to the defending lawyer whether the suit be brought in regular course or whether it has been gathered in through the method above detailed. This system may or may not be an injury to the public. That it demoralizes and degrades the profession is clear, and that it is indefensible must be conceded, unless the practice of the law is to degenerate into a marathon, or the obtaining of business by lawyers is to depend on the question of who can select and pay the ablest corps of field workers and experts.

If we have no present statute, and I question whether we have one which is effective through which this system can be broken up, then it is high time that this Association shall propose and vigorously advocate a remedy.

OUR STATE BAR ASSOCIATION.

I recognize that I have not introduced herein a single new fact, and possibly I have not given expression to a single new thought. I recognized at the outset, and have been impressed more strongly as I have investigated, the utter impossibility of saying anything new upon a subject like this, to this body, and yet it seemed to me worth while to take

up with you existing conditions, to draw your attention to current criticisms, to ascertain wherein we may be at fault and to seek out some remedy. I felt it my duty likewise at the same time to draw attention to those faults or evils which were not ours, which we could not control and therefore could not remedy, but which, if remedied, must be remedied by the public. It is our duty to assume our full share of responsibility, and it is as much our duty to call the attention of those who criticise us to responsibilities which lie at their doors. If reforms are needed, and they are, and if we are responsible in a degree for bringing them about, as will be conceded by all, then how shall we proceed in carrying out this purpose? How may our part of the work of effecting these reforms be most certainly accomplished? As individuals we can do little. Our Local Bar Associations, strong and active as some of them are, though they can do much locally, cannot undertake alone these larger duties. It is only through a great and general organization, strong, active and cohesive, animated with a great purpose, that these things may be done. The basis and the frame work of that organization we have in the Missouri Bar Association. It has done much in the past, but it ought to do more. If it meets the needs of the profession and fulfills its high mission, it must "lengthen its lines and strengthen its stakes." It must reach and influence and bring into its ranks the rank and file of the lawyers at every bar in every county and city in this commonwealth. All over this state there are fine lawyers, splendid men, who should hold membership with us, whose services we need and who would be greatly benefited by the work of the Association, properly carried on. We must have them if we succeed, and they will join if the Association can be made to stand for great and practical things. A mere annual meeting, with a few reports, some fine addresses, excellent entertainment and a banquet, pleasing alike to the mind and the palate, are not enough to satisfy the practical man. We are not in touch. We have no team work. The lawyers of the state are not now, and never have been, really organized. They ought to be, and in my judgment can be with proper effort. Organized not to oppress, not to oppose, not to father some dogma or some theoretical reform, but to build up and maintain high standards among themselves, and compel the observance of same. To forward and promote those things which promise benefit to our profession, and to the state at large. To simplify procedure, to shorten records, to devise a plan to put our courts up with their docket. These are but a few things. There are many more, and others will arise as the days come. The Missouri Bar Association ought to be a real force in that great forward movement manifest everywhere and in every line of activity in this state. If we stand still the procession will move on without us. If we organize and become an active and aggressive force in the state we may vastly increase our influence and effectiveness for the public weal. Let us begin now a great campaign of

organization. Let us bring in new members and let us devise plans and programs of activity which will be attractive in the bringing in of such members. Let us have committees that work throughout the year. Let us have some interest whereby the membership may be kept in touch between our annual sessions. A quarterly bulletin or some publication (and it may be in connection with some law journal with which arrangements could be made) would do much in this direction. We have now but a skeleton organization, which is active once in a year. I would like to see an organization which is active all the while, with a Secretary under pay, qualified to lead, bringing to the attention of the bar current facts of interest which would serve to keep the members of the Association in touch with each other throughout the year. There is not in this state a stronger force than the lawyers if they are united. If we can perfect such an organization with such a purpose and program, we can clean house and keep it clean; we can accomplish proposed reforms for which the public have looked to us with hope, but to this hour with disappointment. We could then recommend with some assurance of success other reforms which we may agree upon as needed. We can minimize criticism, by removing the cause, restore the Era of Confidence and Good Will, and usher in a new day for the Missouri Bar Association, and the things for which it stands. Will we do so?

(Applause.)

THE PRESIDENT: You will notice on the programme we have, now, reports from certain committees: I will call for them in the order listed: The first is that on Jurisprudence and Law Reform, of which Hon. Robert F. Walker, of Jefferson City, is chairman. Judge Faris, is Judge Walker here?

JUDGE CHARLES B. FARIS: I think not, Mr. President. I am expecting him this afternoon, however.

THE PRESIDENT: We will pass that report for the present. The next is the report of the Committee on Judicial Administration and Remedial Procedure—Hon. James H. Harkless, of Kansas City. I suppose I ought to say for Mr. Harkless that he notified me some time ago that he could not act as a member of this committee, but when I was up at Chicago at the American Bar Association, I found he had spent the summer in the woods up in Michigan and so I re-instated him on the committee and I have his name here and am calling for the report. Of

course if he does not make it, we will hold him responsible, that is all. Is there any report from that committee?

MR. HARKLESS: That committee has a very voluminous report. I didn't act on it, however, but I think if you call on our friend John I. Williamson, from Kansas City, you will have the report.

THE PRESIDENT: Then I will call on our friend, Mr. John I. Williamson, of Kansas City, for the report.

MR. WILLIAMSON: I am sorry to say that our friend is reverting to former, and, I thought, abandoned, habits. I have no report for that committee, and I don't know what he means. I am on a different committee, namely, on Constitutional and Statutory Amendments, and I have a report on that, which I expect to present.

THE PRESIDENT: I think I had better put a stop to the quarrel between the people from Kansas City, for, without harmony, there will be no chance for their winning the next meeting of this Association, which I want them to do. I will pass to the next committee. I know we shall have a report from that committee because the chairman of that committee is a gentleman with whom I am real well acquainted, with whom I used to practice (always unsuccessfully on my part), and who was always ready with his cases—and, therefore, has his report: the Honorable Richard L. Goode.

JUDGE GOODE: After such a flattering introduction, I owe it both to the chairman and to the members of the Association to present a brief report. When I was notified that the honor of being chairman of this committee had been conferred on me, I wrote to the other members of the committee and solicited suggestions, and received suggestions from two of the members of the committee. The other members I heard nothing from. Based upon the suggestions of those two, I drew up a report expressing my notions on this subject and sent it around to different members to edit and criticise and then send me their

views. I heard from the same two members. So I present this report as the report of those two men, Mr. Orin Patterson, of Springfield, and Mr. Allen L. Oliver, of Cape Girardeau, and myself; and I want to say, before reading the report, that we didn't find that the legislature had provided so badly about legal education and admission to the bar and didn't find, in our judgment, that much needed to be done in correction of what is on the statute book, but we have good provision and requirements as to the scope of legal education to entitle one to practice, and also as to the mode of ascertaining whether or not he has the required attainments.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

What kind of knowledge will suffice for a legal education must be determined, in large measure, by the object the student has in view in seeking such an education. If he desires to know the law historically, so as to be able to trace its principles, rules and remedies through successive stages of development to their origin, or to understand the rise and growth of our constitutional theories and political institutions, or to know the diverse laws of different countries and epochs, in either case his range of study must be much wider than if he intends merely to practice law as a means of livelihood, just as the studies of one who expects to practice will be wider and closer than are needed in commercial pursuits.

The purpose of the legal education, with which we are concerned, is to prepare to practice law as a vocation. This, too, is the purpose considered by the Legislature in prescribing the topics on which applicants for license to practice shall be examined. The policy of such legislation is to see that everyone admitted to the bar possesses enough of both general and legal knowledge, and enough moral worth, to render it probable that he will attend to business intrusted to him with fidelity and reasonable efficiency.

Another question to be weighed in ascertaining what scope of study should be required for admission is, How much time can be devoted, advantageously, to legal study after having acquired a fair non-professional education? The Recommendations of the Committee of the American Bar Association on Standard Rules for Admission to the Bar, as set forth in the Reports for 1911 and 1912, go further as regards the period of professional study that should be required than do the Rules of the American Association of Law Schools, a body that includes most

of the law schools of high standing in this country, and further than the requirements of those states that have fixed a statutory period.

The recommendations of the committee were as follows:

"X. Student candidates for admission to the bar, in order to be eligible for the examination for admission, shall have studied either in an approved law school, or *bona fide* served a regular clerkship in the office of a practicing attorney during the required period of preparation.

XI. No student candidate shall be eligible for admission to the bar until he shall have devoted four years in preparing for call to the bar, either by the service of a four years' clerkship in an approved law office or three years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in postgraduate work, including procedure and practice."

One fact to be kept in mind in this connection is, that to acquire the general education which every lawyer needs, and which is to be acquired only in school, will occupy most of the period of youth. Another fact is that, however thorough one's theoretical knowledge may be when he begins practice, he still will lack the skill that comes only through experience. Furthermore, a man ought to be self-supporting by the age of from twenty-one to twenty-six, and the country needs his energy by that age in place of others who have become superannuated. Taking into account those facts, the current opinion is, as shown both by legislation and by the requirements of standard schools, that the course of legal study preceding admittance to practice should be three years of from thirty to thirty-six weeks each. The American Association of Law Schools has this rule:

"It shall require of its candidates for any legal degree, study of law during a period of at least three years of thirty weeks each with an average of at least ten hours required class-room work each week; provided, however, that candidates attending night classes only shall be required to study law during a period of not less than four years of thirty weeks each, with an average of at least eight hours of required class-room work each week. (As amended in 1909.)"

According to the address of the President of said Association at the 1915 meeting, twenty-nine schools, or seven per cent of the whole number in the country, grant degrees at the end of a two years' course; but these quick-education institutions have an attendance of only seven per cent of the entire body of law school students, a fact which demonstrates that young men who desire to follow the law think three years' preparation is necessary, and that a shorter course is undesirable even though it enables one to begin earning fees sooner.

Most of the states and territories have prescribed a minimum period of study in a standard law school, or in the office of some reputable attorney, or both. This period is three years in 24 states, and in the District

of Columbia, Hawaii and the Philippine Islands. It is two years in nine states and in Porto Rico. The laws of Oklahoma were deemed so brief and simple, a characteristic illustrated by its constitution, as to require only one year of study to master them. Eleven states have no statutory term. The constitution of Indiana provides that every voter of the state of good moral character shall be entitled to practice.

If three years is the proper term, it follows that a course in law should not embrace more subjects than can be learned sufficiently in three years to be used efficiently in practice; and the question of what subjects a legal education comprises, taking into account its purpose and the time that ought to be allowed to acquire it, has been much considered and discussed by legal faculties and legislative committees charged with the duty to recommend requirements for license to practice. It is obvious that those principles and rules which govern the most numerous actions and transactions of men, those acts and affairs which constantly and frequently affect public and private rights and interests, should be preferred over branches that regulate matters less often the occasion of controversies. Of the latter branches may be mentioned Admiralty Law, that of patents and copyrights, and other branches that require special scientific knowledge in the practitioner in addition to ordinary professional attainments; for example, in patent law, unusual acquaintance with the laws of mechanics and of physical forces like steam and electricity. Persons who need attorneys or counsel in such business may be referred to members of the profession who hold themselves out as experts therein; whereas every practitioner should be learned in the portions of the law which regulate every-day affairs and out of which spring the ordinary volume of practice. Such are Statutory and Constitutional Law, that of Crimes and Criminal Procedure, Contracts, Torts, Real Property, Sales, Mortgages, Equity and Pleading. Those branches must be used so much in the common run of law business, that no one not fairly familiar with them should be permitted to practice.

Our Statutes prescribe 24 subjects in which an applicant for admission must be examined, (to-wit, the following: Contracts, Criminal Law and Procedure, Torts, Domestic Relations, Agency, Private Corporations, Partnership, Real Property, Personal Property, Sales, Bailments, Carriers, Common Law Pleading, Code Pleading, Equity, Evidence, Wills and Probate, Constitutional Law, Negotiable Instruments, Extraordinary Legal Remedies, Conflict of Laws, Insurance, Pleading and Practice under the Missouri Statutes, and Legal Ethics). The rapid growth of administrative bodies, like the Interstate Commerce Commission, Federal Trade Commission, Tariff Commission, Tax Commission, and numerous similar agencies of the Executive Branch of the Government, make it desirable that courses of study should be pursued in the functions and procedure of these bodies and the extent to which their

actions may be judicially reviewed. This country is even now being governed to a considerable extent by Commissions, and will be governed by them more and more. Several new ones have been created during this Congress.

The courses prescribed in other states are not very different from Missouri's, but some include courses on one or more other subjects, to-wit: Trusts, Mortgages, Public Corporations and Quasi Contracts; and it appears to be the general opinion of the legal faculties that the rules affecting Trusts and Public Corporations, at any rate, have attained to sufficient distinctiveness and volume to demand separate courses, and that these courses may be added without exceeding a reasonable three years curriculum.

Looking at the topics prescribed by our Statutes, a doubt may arise as to the expediency of requiring an examination in one of them—namely, Common Law Pleading. The arguments put forth in favor of this requirement in a state where the Code practice prevails are: *First*, that the Missouri practitioner may be called upon to conduct litigation in a state which adheres to the Common Law system of pleading; *second*, that a knowledge of the rules and terms of Common Law Pleading is needed to enable one to read intelligently old cases. The nomenclature of this system of pleading is strange. Many of its rules and forms of action are arbitrary and technical, and in its full development its influence on the disposition of litigation was baneful, far too many cases being decided upon points of practice. Because of its highly technical character, so remote from ordinary habits of thought, an adequate knowledge of it cannot be obtained without much time and study. Sufficient knowledge of its terminology will be acquired in the course of study of other subjects, especially Code Pleading, to enable a practitioner, by occasional reference to treatises on the subject and law dictionaries, to understand the old precedents, and the time that must be devoted to it, if it is one of the subjects of examination for admission to the bar, can be better employed, in a Code state, upon other branches.

A subject that is usually taken late in the course of preparation is Equity. Questions relating to this great system of jurisprudence constantly arises from the inception of legal study—questions of equitable interference by the writ of injunction in tort cases, *e. g.*; to restrain waste, nuisance and continued trespasses; cases of equitable interference in contract matters, such as to restrain the breach of negative covenants, or efforts to procure the breach of contracts of service, to present the transfer to innocent purchasers of negotiable instruments obtained by fraud, and so on through the entire range of property rights. In view of this fact, it is suggested that equity should be one of the subjects for first study.

A legal education should include respect for the law and the courts which administer it, and this respect should be inculcated as part of the course in Legal Ethics. Intemperate criticism of the judiciary by lawyers as well as laymen is a pernicious habit and conducive to social disorder. Probably independent courts of compulsory jurisdiction, instituted as an essential part of the frame of government, for the purpose of settling controversies between men by judgments given according to settled rules, instead of the judge's individual notion of right, have been the most influential of all factors in promoting human advancement; for through their influence has been gradually established the personal security and public tranquility, which constitute the essential conditions and very foundation stones of civilization. There is no other method of ending disputes but strife, as is demonstrated, not only by the Feudal ages when every baron might wage private war against whomsoever he would, but by the present state of Europe. A tolerable degree of internal peace and security has prevailed since national courts of Compulsory jurisdiction were established to determine controversies between men, and we may expect that peace among nations will prevail when courts of like character are instituted to determine international controversies. The law and its tribunals, like all human institutions, have developed from crude originals and through phases that reflect a slowly diminishing ignorance, superstition and violence. If men have been slow in attaining justice they have been as slow in other fields, and ages elapsed before mechanisms were invented which made possible the use of physical forces like steam and electricity. We may compare the progress of the law from barbaric customs to its present state, with the progress of transportation from the canoe and solid-wheel ox cart, to the steamship with screw propeller, the locomotive, automobile and aeroplane. Ideals of justice are innate, but to discover principles and remedies that will realize it in practice has been, apparently, as difficult as to utilize the powers of nature. Hence we may fairly rank the great legal conceptions like Contracts, Negotiable Instruments, Corporations, etc., etc., and great remedies like General Assumpsit, Specific Performance, Injunction, Trover, and so on, alongside the main mechanical inventions such as the steam engine and the dynamo, as helps to progress; and both were alike in developing from crude originals. Constant alterations of the laws so as to include within its justice all classes of society, the erstwhile disinherited villain and the chattel slave, the gradual political enfranchisement of the masses without regard to race, color, previous condition of servitude or sex, the "widening of the basis of liberty and circulating the spirit of freedom," to borrow a phrase of Charles James Fox; the simplification of procedure; all these facts demonstrate that the law, as Lincoln once said of his administration, is at least stumbling along in the right direction. As to the integrity of the courts, the record of more than

two centuries wherein the instances of judicial corruption are negligible is testimony enough. So your committee say that a course in legal ethics should embrace inculcation of respect for the law and the courts; that while both are subject to criticism, depreciative and appreciative, the former should not alone be employed, nor ever employed without careful deliberation.

One reason for attention to legal history is that such research enhances our respect for the law by disclosing its progress from ancient errors, like the torture of witnesses, wager of battle, feudal tenures, want of the equity jurisprudence, of remedies to enforce any contract but specialties, and so on through multitudinous improvements. Of course, there is the further reason for studying the law's development, viz., that knowledge of social and political conditions in the past will reveal the secret reason of many present day rules. The knowledge of legal history is not sufficiently needed in practice to justify making it a subject of examination for admission to the Bar; but it is useful enough to the practitioner to justify attention to it in the way of collateral lectures, and readings in Blackstone, Pollock and Maitland, Holmes' Lectures on the Common Law, Holdsworth, Langdell, Ames, Bigelow, and other authors.

As a part of the history of the law, the careers of its eminent masters both at the Bar and on the Bench, the Cokes, Bacons, Mansfields, Eldons, Erskines, Marshalls, Shaws, Choates, and so on, should be dwelt upon while inculcating rules and principles, as a means to inspire interest and emulation in students. It is not amiss but helpful to touch upon the work of these men and the anecdotes current about them. To be a first rate lawyer, one should be enthusiastic in his profession, and there is no other method of advancing enthusiasm among students equal to pointing out the achievements of its famous followers.

Many states have enacted Statutes on the question of what pre-legal or general education a person should possess to be admitted to practice. Many, not a majority, require an education equivalent to four years in a standard high school, but the Missouri Statute requires "A general education substantially equivalent to that obtained by the completion of a common or grammar school course of study, and shall possess a fair knowledge of the subjects of history, literature and civil government." Besides Missouri, the following states enumerate the several subjects in which the applicant for license must be fairly proficient: Colorado, Connecticut, Delaware, Iowa, Massachusetts, New Jersey, New York, and Pennsylvania. Of these, New York requires a two years course in Latin; Delaware a course equal to four books of Caesar, or its equivalent in some standard author. Rhode Island discriminates in favor of applicants who have had a classical education; and Pennsylvania, ever the home of peculiar laws, exacts that applicants, if not college graduates, shall be examined on the first four books of Caesar, first six

books of the Aeneid and the first four orations of Cicero. Minnesota requires applicants to have had one year of Latin. In Rhode Island a course in the classics will enable an applicant to be admitted after two years in a law school, whereas without the classics he must study three years in a law school or office.

The American Association of Law Schools recommends that, to receive the degree of LL.B., a student should have the equivalent of four years in a standard high school plus two years in a college. Many law schools now enforce the latter condition, while a few, like Harvard, exact an academic degree.

Your committee recommend that for admission to the Bar, an education equivalent to four years' course in a standard high school be required.

What the required general education should consist of is an important inquiry. It is plain that it should comprise subjects which will help in legal study and practice, and this principle of selection will exclude such sciences as Botany, Geology, Zoology and Chemistry, unless there is time for a full college course. Students are apt to select, if left to their own choice, sociology, political economy and like topics, under the impression that they are more germane to the law. But the experience of legal faculties is that subjects which demand close and exact study, thereby training the mind to attention and discrimination, are to be preferred. The Association of Law Schools has recommended for a two years academic course the following: English, two years; Latin or Greek, two years; German or French, two years; Mathematics or Natural Science, English and American Constitutional History, and Psychology; only recommending Political Science, Economics and Sociology if three years are taken. Probably a course in the classics is better than any other for several reasons, the least of which is that many standard law treatises in old times were written in Latin, and the maxims are commonly expressed in that language, as is legal nomenclature, the names of courts, remedies, etc. A second reason is that those ancient states were the source of most of our knowledge, of our useful and fine arts and our political institutions and laws. From Greece we took democracy, speculative philosophy, poetry and eloquence; from Rome much of our legal system and principles of political organization and government. Learning in the classical languages and literature is good for everyone, because of the breadth of general information which accompanies it—information in history, mythology, philosophy, poetry, war, government, in short, of life in its manifold phases. Such knowledge, which is incidentally acquired in studying the classics, has caused those languages to be called significantly the Humanities, as having to do with men in their many-sided activities. That sort of learning is especially good for the lawyer; for the law, like the classics, is one of the Hu-

manities. Those ancient states were confronted with many of the same difficulties that we have to deal with in social, economic and political affairs, and their solutions, whether right or wrong, are useful to instruct us; are an accumulated experience whereby we may profit. The law, too, has to do with mankind in all their relations; as husband and wife, master and servant, citizen and state, laborers, property owners, legislators, executives, judges. One has only to read the *Federalist* to learn how many lessons concerning political institutions and the science of government, the founders of this Republic drew from the classic states—the faults and excellencies of the Athenian Democracy and of the Roman Commonwealth. Such acquirements lift the attorney from a mere mechanic in his calling into the station he should really occupy in a community, that of a cultivated member of a learned profession.

How is a legal education best obtained? Practically only two methods are available, study in the office of a practicing attorney, or in a law school, and the statutes of the states allow either. In our country the first method was the one generally followed until a comparatively recent period. It is the most economical one available, because the student does not need to leave home, as in most cases he does in attending a law school, and he avoids buying books during his apprenticeship by using the library of his preceptor. The method possesses what at first blush appears to be this advantage: that the student is put in touch with the application of the rules of pleading and procedure from the first, and it is supported by the fact that it has turned out many great lawyers. Nevertheless, both in our country and in England, the second plan has won the preference. It has been necessary for centuries in England for the would-be practitioner to reside in one of the four Inns of Courts and pursue his studies there under the preceptorship of professors called "Readers." In the United States, law schools have much increased in number in less than a century, also in attendance; and the inclination grows all the time to prepare for practice by attending such schools. In 1900 there were ninety-six Law Schools in the United States with 12,416 students therein; in 1915, 137 schools with 21,885 students, or a gain of 75 per cent. One reason of this increase may be that the body of the law has become so extensive in recent times, by the expansion of the rules of commercial affairs, negligent torts, monopoly and unfair trade, receiverships and other branches, that the student needs more instruction by a preceptor than he did prior to this development. For whatever reason, a course in a law school is the preferred method of preparation for practice.

Two methods of instruction prevail in the law schools of the country—the study of textbooks as original sources of legal doctrines and rules, supplemented by the study of cases; and the comparatively recent method of relying on the study of cases alone for knowledge of

rules and doctrines—the so-called case-book system as introduced in Harvard law school by Dean Langdell twenty-five or thirty years ago.

A third method, to-wit, lectures delivered by a professor to the class, has become nearly obsolete except in post-graduate courses, for the reason that it throws the work too much on the instructor and too little on the student, thereby missing one of the chief ends of education—teaching youth to concentrate their thoughts and struggle against and overcome difficulties. It is thought by your Committee that it would be outside the proper scope of its report, to-wit, legal education in respect to admission to the Bar, to discuss the comparative merits of the two rival systems of instruction now in use in law schools, and the question has been adverted to only because it is germane to the general subject of legal education.

A main obstacle to raising the standards of the Bar is the facility with which one can start in the practice. Capital investment is not necessary, and conditions usually are easy; a short term in a law office, or a correspondence school, or a night school, too often suffices in Missouri. Every one engaged in reading law knows how eager is the rush and how constant is the effort to get admitted after wholly insufficient preparation.

The quality of the examinations for admission to practice shows, on the whole, steady improvement. These examinations are now conducted in twenty-nine states by Official Boards of Examiners; in sixteen states they are conducted by the Supreme Courts or committees appointed by those courts, a plan which makes the committees equivalent to a permanent Board, and in only three states can lower courts admit. Where there are officials specially charged with this responsibility, it is reasonable to expect that methods of examination will be studied and the best worked out in time. Many statutes exact that the applicant shall answer correctly a certain percentage of the questions propounded, usually 70 or 75 per cent. It is doubtful if this matter would not be better left to the discretion of the examiners. When hypothetical cases are propounded, an applicant's answer might show deep and comprehensive knowledge of the law bearing on the question, and yet not apply the right rule. Many able trial judges will be reversed in more than 25 per cent of the cases appealed. The questions asked should be searching but not framed with an eye to puzzling applicants. Much thought and a keen sense of justice are needed in conducting these examinations; and so far as known, Boards of Examiners are displaying the proper spirit, and are advancing toward standards that will prevent the admission of incompetents without unduly straining applicants.

The fee for examination is fixed in our state at \$10.00, in most of the states at \$15.00, and in some at \$20.00 and \$25.00. Your Committee

respectfully recommend \$20.00 as reasonable. They also recommend that everyone to whom a license is issued be required to take the oath recommended by the American Bar Association.

RICHARD L. GOODE, *Chairman*;
A. L. COOPER,
ALLEN L. OLIVER,
ORIN PATTERSON,
R. M. SHEPPARD,
Committee.

THE PRESIDENT: What will the Association do with the report of this Committee on Legal Education and Admission to the Bar?

JUDGE R. T. RAILEY: I move that same be received and its recommendations concurred in.

Which motion was duly seconded and carried.

The next report due, under the programme, is that of Legal Biography—Hon. P. Taylor Bryan, of St. Louis. Is he here?
(No response.)

The next is that of the Committee on Grievances, of which Judge W. M. Williams was chairman. Hon. William M. Bowker, of Nevada, is ranking member.

MR. BOWKER: I am happy to state that the committee, after much labor and having made a thorough search, have found no grievances complained of. (Applause.)

THE PRESIDENT: A most happy condition.

The chairman of the next committee advises us that his report is not yet ready. We will have it later. That brings us to the report of the Committee on Constitutional and Statutory Amendments, of which committee Hon. Ralph F. Lozier is chairman, and I believe the report is to be presented by Hon. John I. Williamson, of Kansas City. I don't want anybody to leave. I think there is something in this report that may interest you.

MR. WILLIAMSON: The report is brief. There are a number of printed copies which are obtainable at the Secretary's desk, here, and in the office of the Secretary.

REPORT OF THE COMMITTEE ON CONSTITUTIONAL AND
STATUTORY AMENDMENTS OF THE MIS-
SOURI BAR ASSOCIATION.

To the Missouri Bar Association:

Your committee on Constitutional and Statutory Amendments reports as follows:

First: This Association, for several years last past, has annually advocated the calling of a constitutional convention for the purpose of revising the state constitution. Your committee believes that there is a steadily growing demand for a new constitution. Both of the great political parties have, in their platforms this year, advocated a constitutional convention. Numerous civic organizations throughout the state have expressed themselves in favor of the idea. The Special Committee on Legislation and Remedial Procedure, appointed at the 1915 meeting, has, as its first recommendation, advised "that this Association again commit itself to the proposition of a new state constitution." In this recommendation we heartily concur. The reasons in support of it are too numerous and too well known to need repetition here.

Second: Our second recommendation is that there should be an immediate revision of the civil and criminal codes of procedure. No one will contend that our present codes are perfect. That much time and expense can be saved by a judicious revision is self-evident. It is equally self-evident that we cannot hope to accomplish any substantial results along this line without substantial unanimity of action. This committee, therefore, endorses the report of the Special Committee on Legislation and Remedial Procedure.

It is beyond reason to expect any body of lawyers, however learned or competent, to draft a revision of the codes which would meet with the approval of every member of this Association in all respects. It follows, therefore, that if we are to do anything at all, we must concede somewhat, and if we cannot get the things each of us individually prefers, we should be content to advocate a revision which is a substantial step in the right direction, even though we might individually prefer to see some changes made therein. In this connection, your committee ventures to suggest that although this Association is the official representative of the bar of the state, and although the lawyers are, in public opinion, held responsible more than any other profession for the state of the law, nevertheless, candor compels us to admit that so far there is not much in the way of law upon the statute books to evidence the activity of this Association, and that in point of fact, the Missouri Medical Association has exercised a more forceful and efficient influence upon legislation affecting the medical profession in this state than this

Bar Association has exercised in matters peculiarly pertaining to the administration of justice. Your committee attributes this state of affairs, not to a lack of capacity or interest on the part of the members of this Association, but to the fact that we have, in the past, clung too tenaciously to our individual preferences, instead of lending united support to the measures which this Association has from time to time recommended.

Third: Your committee believes that it is peculiarly the duty of this Association to guard the administration of the law and the independence and dignity of the bench, and of the legal profession, with jealous care, and that to that end, it is peculiarly the duty of the bar of this state from time to time to call the attention of the public to such matters as in the opinion of the bar are detrimental to the administration of justice. In the opinion of this committee, the primary election law, in so far as it relates to the nomination of judges, has proved a disappointment to its advocates, and has demonstrated its inefficiency. We, therefore, recommend that the law providing for the nomination of judges of the Supreme Court, of the Courts of Appeals and of the Circuit Courts be repealed. (Adopted.) In the light of experience it is probably unnecessary to suggest to this Association the reasons for this recommendation, but in the belief that the people of this state should and do attach some weight to the views of this Association, we believe it is wise to submit some of the reasons which impel us to recommend the repeal of the primary election system, at least, in so far as it relates to the nomination of judges. Among the many reasons which might be urged, we respectfully submit the following:

(1) It is practically impossible for the voters to have sufficiently accurate knowledge of the merits of the various candidates for the bench to enable them to choose the candidate best fitted for a given position, and this is especially true in the selection of judges of the Supreme Court, of the Courts of Appeals, and of the Circuit Courts, at least in the larger cities, and this evil is intensified under the present long-ballot system.

(2) In actual operation, the primary law has not lessened, but rather increased the evils of "machine rule," so-called.

(3) It is more difficult than formerly to fix the responsibility for bad nominations, but party organizations and party leaders control nominations as effectually as ever.

(4) Under the primary system any man possessing the statutory qualifications and willing to pay the statutory fee, may have his name placed upon the ballot.

(5) It is practically impossible under existing conditions, to draft men specially fitted for nomination or election, hence the candidates, not the electors, determine what names shall be submitted to a vote at a primary election.

(6) There is a growing tendency for the primary to degenerate into an undignified scramble for votes, a condition which is particularly deplorable in the selection of judges.

(7) A primary election involves the successful candidate in two long and expensive campaigns, with the result that many properly qualified lawyers cannot afford to become candidates; and the more important the office to be filled, the greater does this burden become.

(8) As a rule, the voters at a primary are not sufficiently familiar with the record made by a judge who is a candidate for re-election to determine whether he deserves a re-election or not. Hence a capable judge is not always rewarded for good work, nor an incapable one punished for his incapacity.

(9) A very large percentage of the voters at a primary vote in the dark, by guess-work, or at the suggestion or direction of party leaders. Rotation of names upon the ballot has not lessened the chance-directed vote. It has merely divided it more evenly.

(10) After several years' experience under the operation of the primary law, we do not believe that it has improved the character or standing of the bench as a whole, and we do believe that the system is burdensome to the candidates, hurtful to the independence of the bench, and tends to degrade the judges, the courts and the administration of justice in popular confidence.

Your committee realizes the difficulty of devising any method which shall not be open to criticism, but, nevertheless, ventures to suggest that in its opinion some relief might be found if the law were so changed as at least to permit, if not to require, nominations for judges of the Supreme Court, Courts of Appeals, and Circuit Court, to be made by separate judicial conventions, composed of delegates to be chosen at a primary election to be held on the same day throughout the district to be affected and subject to such statutory safeguards as are now provided for general primary elections, and with such provisions for the placing of other names upon the judicial ballot, by petition or otherwise, as will afford a reasonably effective means of avoiding some of the ills which have heretofore marred the convention method of making nominations.

We also recommend that the names of candidates for judicial offices be placed upon a separate ballot.

One of the members of your committee, Mr. Henson, does not agree to all that is said in this report in respect to the repeal of the primary law. He believes, if anything be done, that we should recommend the adoption of the non-partisan judiciary plan for the entire judiciary system of the state, so that judges of the various courts of the state be placed, under appropriate headings, upon all the ballots at

the general election, and require the voter to mark off the names of all except the one for whom he desires to vote. He believes such a law would be constitutional if made to apply to every judicial position in the entire state.

Respectfully submitted,

RALPH F. LOZIER, *Chairman*;
CHARLES L. HENSON,
JAMES F. GREEN,
CHARLES M. HAY,
JOHN I. WILLIAMSON.

(Applause.)

May I add that it was not possible to have a meeting of all the members of this committee. The report was drafted substantially as here presented, sent to each member of the committee and by him returned with some suggestions or modifications. In substance, I think the report here is a correct reflection of the views of the committee and, that we may have this matter before the house, Mr. President, I move that the report be received and filed, and approved in principle. (Applause.)

MR. W. H. H. PIATT: With the consent of Mr. Williamson, I would like to second the motion, with the provision that the report be adopted section by section.

THE PRESIDENT: The proper course would be to have the motion seconded and then make call for a vote section by section.

MR. J. T. GOSE: I second the motion.

THE PRESIDENT: Is there a request now for consideration by sections?

MR. PIATT: I move that we consider the report by sections.

SENATOR FRED S. HUDSON: We cannot adopt the report in principle. We have to either adopt the report or reject it.

THE PRESIDENT: Well, the chair will rule that we will not adhere to any parliamentary technicalities. It is easily susceptible of three divisions and can be voted upon separately. I overrule the point of order.

The first recommendation is as to a constitutional convention, the second is that this committee endorses the report of the Special Committee on Legislation and Remedial Procedure—

MR. WILLIAMSON: I had assumed that the report of that committee would be presented before this report of ours would be read. That portion may be waived.

THE PRESIDENT: The second paragraph will be withdrawn. It is moved now that we adopt recommendation No. 1 of this committee. Is there a second to this motion, as amended?

MR. HARKLESS: I second the motion.

THE PRESIDENT: Are you ready for the question? As many as favor the adoption of recommendation No. 1 of this committee will say "Aye." (After affirmative and negative vote.) The Ayes have it, and the Association endorses recommendation No. 1. Recommendation No. 2 is withdrawn for the present.

MR. PIATT: I move the adoption of paragraph third, which deals with the primary law.

THE PRESIDENT: It is moved that this Association adopt the recommendations contained in the third paragraph. Is that motion seconded?

MR. J. H. HULL: I second the motion.

MR. E. M. GROSSMAN: I move as an amendment to that part of the recommendation which deals with a convention for judges that we recommend that the supreme court and the appellate and circuit court judges be appointed by the governor.

THE PRESIDENT: Is there a second to the motion? The chair hears no second.

MR. CHARLES L. HENSON: I second the motion.

THE PRESIDENT: The chair hears no second.

MR. GROSSMAN: There is a second here.

THE PRESIDENT: I will put it, then. The motion now is that we substitute for the recommendation in the report of this committee which relates to the primary election system a recommendation that our judges be appointed by the governor. As

many as favor that will say aye (vote). Contrary, no (vote). The noes have it.

Now the third recommendation is up for consideration, concerning the primary law.

MR. ROBERT LAMAR: On page 4 of the report, I note as part of the recommendation that the delegates are to be chosen at a primary election. Now my experience is that that would be a cumbersome method. You might as well vote on the judges. If you are going to abolish the primary, it occurs to me that the old fashioned township convention would be a more satisfactory method. I therefore move that the phrase on page 4 containing the words "composed of delegates to be chosen"—no, striking out words "at a primary election to be held on the same day throughout the district to be affected and subject to such statutory safeguards,"—and so on, be stricken out, leaving it reading "elected by a convention to be composed of delegates chosen by the various counties and cities in the state."

MR. PIATT: I rise to a point of order, or a question of privilege: My motion is directed solely to what is contained in paragraph 3, on page 2: "We, therefore, recommend that the law providing for the nomination of judges of the Supreme Court, of the Court of Appeals and of the Circuit Courts be repealed." That is all there is in it. This other prophecy and stuff that follows—or "language" instead of "stuff"—on pages 3 and 4—I don't move the adoption of that.

THE PRESIDENT: Mr. Piatt explains that his motion is that we adopt the recommendation of this committee as to the repeal of this law. He does not intend to commit this Association to the reasons assigned for the committee's views regarding the primary law—so in voting upon this proposition you will remember that fact. That cuts out your objection, Mr. Lamar?

MR. LAMAR: I withdraw the motion.

MR. EWING COCKRELL: If that is adopted and then we do not agree upon any other plan, where will we be?

THE PRESIDENT: We will be back before the legislature, as we have always been. If we fail to devise a remedy, they will.

MR. COCKRELL: The practical question is, what is the substitute? It is now a question of choosing between this method and some other method.

MR. J. C. JONES: It seem to me that under the law, as I recall the decisions, particularly one decided by Judge Sherwood—he held that, having no primary law with respect to an office, we might resort to the old plan of the nominating convention, and if we repeal the primary law we are back to our common law rights, and we have the right within the several parties to say how we are going to conduct our nominations, and we don't need anything from the legislature if we repeal the damned primary law.

MR. F. N. JUDSON: I agree with Mr. Jones. I think the primary system for the selection of judges in this state is the worst system that the wit of man could devise. You put a premium on the expenditure of money in campaigns and we embarrass the administration of justice by taking time for canvassing that ought to be given to the determination of causes before the court. I think it is a wholly bad system. While a better system than the convention system might be devised, I think we would be better off under it than under the present system.

MR. PIATT: Replying to Bro. Cockrell—the proposition before us is: Are we in favor of the primary system for the nomination of judges, which is unsound in principle—as every lawyer who has considered it believes—or are we not in favor of it. The question is: whether or not we will support the primary system, or condemn it.

MR. BEN E. TODD: I don't understand that two matters can be considered by us at one time. A motion can't be made on two subject matters at once. We can consider this and dispose of it and then if my brother has something to offer as a substitute that can be taken up in due season.

THE PRESIDENT: There is only one question before us: whether or not the Association advises the repeal of the primary law as related to the judges of certain courts—supreme, appellate and circuit courts.

The vote was taken by standing, resulting in 66 ayes, and one no; the motion being declared carried.

MR. HARRISON (who cast negative vote): I move that my position be made unanimous.

THE PRESIDENT: The chair will consider his position as being made unanimous, but not affecting this question.

MR. WILLIAMSON: In view of the action of the Association, in order that this action may not end here, I now move you that the President of this Association appoint a committee whose duty it shall be to draft a bill providing for the repeal of the primary law and, as the committee may or may not deem wise, the substitution of some other method in its stead, that committee to report to the Executive Council of this Association. The Executive Council shall take such action as it thinks best, then, to refer the bill to the next session of the legislature.

THE PRESIDENT: You mean the General Council, or the Executive Committee—the General Council is composed of men from each circuit in the state, and the Executive Committee is composed of five or six men.

MR. WILLIAMSON: Then the General Council would be the better committee—

THE PRESIDENT: It would be hard to get action then, you know.

MR. WILLIAMSON: I will re-frame that motion to make it read "Executive Committee."

THE PRESIDENT: A number of things are likely to be referred to a committee to be known as the Legislative Committee, and that committee should be appointed by the gentlemen whom you may select as President for the coming year, because the work will devolve upon him and therefore I would request that you substitute the words "the President elected at this session" instead of "the President" as the motion originally read.

MR. WILLIAMSON: That is agreeable to me.

MR. J. C. JONES: I find that the regular committees have so much work thrust upon them that I move that a special

committee be appointed to take charge of this matter and draft a bill, to be reported to the Executive Committee.

MR. WILLIAMSON: The motion that I made was that a special committee should be appointed to draft this bill and co-operate with the Executive Committee.

MR. HARKLESS: Well, the change suggested by Mr. Jones is that the President now in office appoint this committee.

MR. J. C. JONES: Exactly.

THE PRESIDENT: Let me suggest a thing now. I want to suggest this fact—that in selecting this committee it ought to be very carefully selected. You have agreed upon the framework of what you want done. There is no immediate necessity for this committee to draft a bill, because that is quite simple, but the important work of the committee will be before the legislature, and therefore that committee should be very carefully selected from the body of the state, and selected by the incoming President, whose duty it will be, and upon whom responsibility will rest, for the presentation of the bill.

MR. JONES: I withdraw the motion.

MR. TODD: I rise to a point of information. I find a good deal of a tendency in this Association to appoint a committee to pass upon the adoption of an amendment to our laws. If we are going to take a stand here in favor of the nomination of judges by a convention—in which I heartily believe—it ought to be done on the floor of this convention and without any reference to committees—without leaving us entirely in the dark as to the personnel of this committee or the action they shall take. It strikes me we ought to have a flat, clear, distinct understanding here as to what position this Association is going to take on the profound problem of better judges in the state of Missouri.

MR. JONES: The recommendation reads, "We, therefore, recommend that the law providing for the nomination of judges of the Supreme Court, of the Court of Appeals and of the Circuit Courts be repealed." The recommendation should also include the several criminal courts and the court of criminal correction in this city. I would like to move, if it is not too late,

that there be inserted in there "all other *nisi prius* courts," or "all other trial courts," or "all courts of record"—perhaps that is the better term—"all trial courts of record"—Mr. Williamson is favorable to that amendment—

THE PRESIDENT: I don't see how we can engraft that on. That recommendation has been adopted.

MR. JONES: I move you that this committee that is to be appointed be instructed to consider and embody in the bill to repeal the primary law, the provision that it shall be applicable to all trial courts of record—that the repeal shall be applicable to all trial courts of record.

JUDGE W. O. THOMAS: I don't believe that the Supreme Court can be called a trial court of record. I think they ought to be covered here.

THE PRESIDENT: That is already included.

MR. TODD: The county court is a court of record in Missouri, and the probate court is a court of record. Those two courts certainly should not be included in this motion at this time. I suggest that the gentleman amend his motion by naming the courts to which he refers.

THE PRESIDENT: I suggest that you might say, Mr. Jones, in your motion, that it shall be considered to include the supreme court, courts of appeals, circuit court—and add any other courts—

MR. JONES: Common pleas, criminal courts, probate courts in—

THE PRESIDENT: I would like to have that reduced to writing.

MR. LAMAR: If you include county courts and probate courts, you are getting on dangerous grounds when it comes to getting this through the legislature.

THE PRESIDENT: You can't do it at all.

MR. LAMAR: You had better leave them out.

MR. JONES: Well, probate courts in counties having more than 100,000 inhabitants.

THE PRESIDENT: Then how does the motion read?

MR. JONES: That the committee be instructed to consider the recommendation and to draft the law repealing the present primary law insofar as it applies to judges of the supreme court, of the courts of appeals, of the circuit courts, courts of common pleas and courts of criminal correction throughout the state, and as it applies to probate courts in jurisdictions having more than 100,000 inhabitants.

Motion seconded by several. Question called for. Motion carried by unanimous vote.

THE PRESIDENT: The next report is that of the Committee on Historical Data of the Bench and Bar—Hon. Shepard Barclay, of St. Louis, chairman.

JUDGE BARCLAY: The members of the committee who are present at this meeting have not had time to confer as to the report to be submitted.

THE PRESIDENT: Well, we will pass that for the time, then.

MR. HARKLESS: What do I understand is the present status of the resolution to appoint a committee—is it before the house, or not? The committee is not named, nor how many.

THE PRESIDENT: There was some confusion here in regard to the proceeding, anyway. If you want to appoint that committee—as I recall it, that motion was not acted on.

MR. WILLIAMSON: The motion, as amended, was that the committee should be appointed by the incoming President, but the question was not moved.

THE PRESIDENT: But Mr. Jones injected into the discussion the question of what that committee should do and there followed then a motion by him as to what they should consider, but the committee itself has not yet been provided for by resolution adopted. Now can I understand your motion to be that a committee be appointed—of how many?

MR. WILLIAMSON: I didn't fix the number, but leave it to the discretion of the body.

THE PRESIDENT: Whose duty it would be to prepare bills to be put into—

MR. WILLIAMSON: To confer with the Executive Committee and then the General Council, and then go to the legislature.

Upon vote, this motion was declared carried.

JUDGE HARRIS: I think we ought not to pass this subject as it is, without some discussion on the part of this body before it disperses, as to the kind of plan that we expect this committee to work out. I heartily agree with the suggestions made by my friend Todd, of Kansas City. Evidently there are three plans that this committee may pursue—one that they will draft a bill repealing the present primary law, which will simply leave the matter without any law and leave the parties to their common law rights, as suggested by Brother Jones here; or the plan to leave it to the convention system, or to leave it to the parties as to whether they will have the primary or the convention—or there might be some other plan. We ought to come to some agreement here as to what sort of a plan we are behind or are willing to stand for. I would not want to be on a committee turned loose that way to draft some law that I didn't know whether or not even a respectable majority would be willing to stand for. I think we ought to take a little time—we haven't thought about it now. Let the members of the Association get their wits busy and some time tomorrow or day after tomorrow propose some tentative plan—not draft the law in all its specific details, but present some system to us and then we can adopt something and the committee will know the line along which they should work. They can't really say now that the lawyers approve any one plan, now—and so I suggest that—I move, sir, that the chair recommit this particular phase of that subject to this committee that is already in existence, with the request that they report to the Association tomorrow at some time some proposed plan that we shall stand behind, in lieu of the primary system which we are seeking to have repealed.

Motion duly seconded and carried, unanimously.

THE PRESIDENT: I will recognize, at this point—that being the last regular part of the programme—Senator Phillips, of St. Louis, who desires to offer a resolution.

SENATOR A. S. PHILLIPS: Yes, sir, I offer a resolution, which is in the hands of the Secretary.

THE SECRETARY: (Reading) *Resolved*, That the Missouri Bar Association hereby recommends for passage by the next General Assembly of Missouri, a fair and adequate Workmen's Compensation Law, fairly and efficiently administered.

SENATOR PHILLIPS: I move that the resolution be adopted. The motion to adopt was duly seconded, and carried.

MR. PIATT: Are you under the head of "New Business?"

THE PRESIDENT: Yes, we will go to the head of "New Business."

MR. PIATT: By reason of matters to which attention was called in our President's splendid address, I move you that a committee of five be appointed to report at least tentatively at the business session tomorrow on a method of organization whereby this institution may have tentacles or legs in the various counties of this state; and my reason is that I have been for a long time impressed with the impotency of this institution to be of any great use to organized society. The lawyer is for society, and not society for the lawyer—the individual lawyer of this country and this state has taken his part for society, and the organized lawyer in this state, and nationally, has taken but little part.

MR. JONES: I second that motion.

THE PRESIDENT: As I understand it, the motion is that a committee of five be appointed to report to this body tomorrow a plan whereby we can get an articulated organization, reaching into every county of this state.

MR. PIATT: I have this idea: If in every county of this state where there are any number of members of the bar, they were organized into a junior organization or a unit of this organization, and had one, two or three meetings a year, giving some attention to the things that are needed with respect to the lawyers and the administration of justice, not only in their county but generally, and then report, perhaps, to this meeting,

we would get a more effective organization and would have more weight when we go before the legislature. We could do better what we want to do and the legislature would have more faith in what we say there.

MR. JONES: I seconded the motion and I want to say a few words of endorsement. It is quite true with all the bar associations that there is no inducement held out to its men to enter into a more active interest in them, and the thought expressed at this Association is the beginning of a movement which, if we will take it up, will lead to very beneficial results, not only to the bar of this state, but nationally. We ought to encourage the maintenance of a bar association in every city of any size in this state, and every city should be required to send delegates accredited to the Association, to act for the local lawyers. They can't all come here. You men come here as individuals, and you don't come representing anybody but yourselves, and the sentiment as you gather it in your community, but if you come here representing local associations throughout the state you will assume greater responsibilities than you dare to assume now. In that way, we can help build up the state association and ultimately be able to do that which I hope and long for—to accredit to the American Bar Association a like representative of the State Bar Association, empowered to act for it. I believe that thought can be worked out for the good of the profession and I sincerely hope something along that line will be adopted by the committee.

Question being called for, the vote was taken and the motion was carried unanimously.

THE PRESIDENT: The chair will appoint on that committee the following gentlemen: Mr. Piatt, of Kansas City; Judge Muench, of St. Louis; Mr. Lamar, of Texas County; Mr. Gose, of Shelby, and Mr. Hunter, of Moberly. I want to say in that connection that the 19th judicial circuit of this state, where Mr. Lamar lives, has one of the best local or district bar associations in this or any other state.

MR. E. M. GROSSMAN: The President, in his address, recommended the creation of a Legislative Reference Bureau,

or something of the sort. I move that the principle involved in that suggestion contained in the President's address be approved by this Association and that the subject matter be referred to the legislative committee with the request that they draft the bill after conference with the Executive Committee, to present to the legislature.

MR. E. L. ALFORD: I second the motion and at the same time I want to refer that committee to the report of a committee appointed by the Governor for the purpose of drafting bills for the repeal of all unconstitutional, duplicate, conflicting and obsolete statutes. The first part of the report of this committee, of which I was a member, recommended to the legislature the appointment and creation of a legislative drafting and reference bureau. That report contains numerous data with reference to the matter, from this and other states.

THE PRESIDENT: The committee will have recourse to that report if this is adopted.

Upon vote, the motion was declared carried.

MR. JONES: I wish to make an announcement at this time. I ask you not to forget a reception tonight in this room, at 8 o'clock. It is simply to get together and get acquainted. The boat ride tomorrow is at 4 o'clock and I want to say for the benefit of the city members who desire to go down in their machines and leave them at the levee that I have arranged with the chief of police to have a detail of patrolmen there to look after the machines—and to guide you home from the River-view Club, if you need guidance. (Applause.)

THE PRESIDENT: The Secretary of this Association, being of German extraction, enjoyed very much the last promise. (Laughter.)

PROF. M. O. HUDSON: The President of the Association suggested in his address that we should publish a law quarterly, and in line with that suggestion and in line with the motion carried involving the formation of local organizations throughout the state, I move that the publication of the Proceedings of this Association in book form be abandoned and that the Association publish as a substitute a law quarterly, in periodical form.

The motion was seconded by Mr. Harkless, of Kansas City.

MR. HUDSON: The proposal that the publication of the annual proceedings in book form be abandoned is not essential to my proposition. I think it is a practical help to it, however, and I have therefore embodied it in the motion. The present annual book of the Bar Association comes to our members once a year and finds a permanent place on their library shelves, but does not force itself on their attention throughout the year. The book contains reports which are not of permanent value. It contains little information of what is going on throughout the state in our profession and seldom offers material concerning the activities of Associations elsewhere. The quarterly which I propose, if substituted for the annual book, would be received by the members of the Association four times a year and by forcing itself on their attention would arouse greater interest in the work of the Association and it would make members feel that the Association is of greater importance in their professional work. It would have the merit of permanence and might well be bound by the Association and distributed in book form if necessary, and would yet be in form for convenient use. It would contain the proceedings of the annual meetings, but such proceedings would be published in somewhat amended form. It would also contain reports of the various committees, sent out in advance of the annual meetings. As it is now, the Association is put to expense to print those reports and they are printed only in temporary form. The quarterly would also give us valuable information as to members in other states—particularly as to the activities of the American Bar Association. It might give us information concerning the contents of legal periodicals, many of which some of our members do not have a chance to see, and it would furnish to the bar of the state a discussion of legal points and would thereby encourage legal scholarship. The prototype of this sort of a quarterly is the American Bar Association Journal, which has now been published for two years. The Massachusetts Bar Association last year undertook the publication of such a quarterly, instead of its annual proceedings, and in Massachusetts it has met with great favor, indeed. The

West Virginia Bar Association publishes a magazine of its own called "The Bar." Through the summer months it is published bi-monthly, but otherwise monthly. The American Bar Association Journal is sent to its members, though the membership fee of \$5 a year was raised to \$6 at the time the publication was begun. In Massachusetts the fee has not been raised—which is \$5 a year, the same as ours. They send the magazine out free. The expense of such a quarterly would not be great. The Massachusetts quarterly the last year has cost something about \$1,000. We have spent something like \$1,700 on our publications—the book as well as the special reports. The book costs us now a thousand dollars. The special reports this year cost us about seven or eight hundred dollars, I am told—

THE PRESIDENT: Not that much.

THE SECRETARY: What was the exact bill, Judge Harris, for your committee report?

JUDGE DAVID H. HARRIS: It was less than \$200.

THE SECRETARY: The amount we paid last year for the minutes was about \$900.

MR. HUDSON: I was misinformed by the Treasurer as to the cost of this particular report, but I have looked the matter up and ordinarily, through the years, the books have cost around \$1,000. It seems to me by arousing interest this way and bringing to the notice of members of the bar matters which might escape their attention, we can do a great work toward encouraging the formation of local bar associations and disseminating information. I move that the proposition be referred to the incoming Executive Committee for such action as they think proper.

MR. TODD: I rise, first to a point of order. The motion contains two distinct matters—first, the abolition of the printed book of proceedings, and, second, that we commit ourselves to a policy of publishing a quarterly. I would like to have the ruling of the chair upon that question.

THE PRESIDENT: The motion may contain many matters. You may have a separate vote on the various matters if you desire.

MR. TODD: Then I speak on the motion. First, the preservation of the reports of the doings of this Association is a matter of much historical value. I have had them upon the shelves of my library for many years, when I wish to examine them for purposes of finding out about certain articles that were read, or refer to other matters. The published volume has a historical value that cannot be preserved in magazine form. Again, the magazine form pretty likely goes into the waste basket. To the desk of every busy lawyer come periodicals and magazines that we don't have time to examine. I can't see where the Association will be benefited any by the proposed innovation suggested by our learned brother. For one, I am opposed to it.

MR. ROBERT LAMAR: If any way can be worked out to raise finances to publish a quarterly, I would be glad to see it done, but I am very much opposed to abolishing the publication of the report of the proceedings, in permanent form. I have them for many years back and I preserve them in my library and very frequently refer to them, and I should regret very much to see that policy abandoned.

THE PRESIDENT: We are dealing with a serious and important subject now and should not take action hastily. This will be the pending question tomorrow morning at 10 o'clock, when we meet.

JUDGE HARRIS: I move that when we adjourn, that we adjourn to 9 o'clock tomorrow morning.

The motion was duly seconded.

JUDGE HUGO MUENCH: I hardly think that would be just fair to our St. Louis brethren. If we get along as fast as we did this morning and today, we will get through.

JUDGE HARRIS: If the lawyers who have to work harder for what they get than you city lawyers do can be here at 9 o'clock, don't you think, Brother Muench, that you can make that sacrifice, tomorrow?

JUDGE MUENCH: You don't understand me. The official programme says 10 o'clock, and now this evening you change that programme to 9 o'clock. Every one of our local members will not get the notice of the change in time.

JUDGE HARRIS: Well, the working members are here now.

JUDGE MUENCH: No, many of them are gone. It is not—

JUDGE HARRIS: I thought perhaps the city papers, in making some report of today's proceedings, would say that the hour for meeting tomorrow morning had been changed from 10 o'clock to 9 o'clock.

MR. J. C. JONES: If we adjourn to 9 o'clock and continue this order of business which we are now on, which subject will likely consume that hour, and is not a matter in which the city lawyers are particularly interested—I think they would be quite as well satisfied to have it in one form as the other—and the regular order can proceed at 10 o'clock.

THE PRESIDENT: Suppose we have it understood that nothing will be taken up prior to 10 o'clock except the pending question. Is that satisfactory? The motion is now that we take an adjournment to tomorrow morning at 9 o'clock. Those favoring the motion will say "aye." The ayes have it.

Adjournment accordingly.

SECOND DAY, WEDNESDAY, SEPTEMBER 27TH,

9:40 A. M.

MORNING SESSION.

THE PRESIDENT: I will appoint Judge Fred Williams sergeant-at-arms and ask him to restore order at the back of the room. The pending question is on a resolution offered by Professor Hudson, touching the publication of a quarterly by the Association. The chair recognizes Professor Hudson.

MR. HUDSON: Mr. Chairman, I move that the proposal which I made yesterday, for the establishment of a law quarterly, to take the place of the present annual book that we publish, or to supplement the present book, be referred to the incoming Executive Committee with power to act.

MR. TODD: May I inquire who will be the Executive Committee?

THE PRESIDENT: Are you ready for the question?

The motion was duly seconded.

THE PRESIDENT: It will be the new President of the Association, the new Secretary, the new Treasurer and two other members to be named by the General Council, and nobody here knows who they are, I suppose.

MR. JOHN W. HALLIBURTON: This is something new to me—what is it you are proposing to publish?

THE PRESIDENT: The matter before us yesterday afternoon was that the Association publish a quarterly bulletin. The report was quite full.

MR. HALLIBURTON: What was it to cost the Association?

THE PRESIDENT: It was to cost a thousand dollars a year. This motion refers the whole matter to the Executive Committee.

MR. HALLIBURTON: I think we ought to pass on it ourselves.

THE PRESIDENT: The proposition is now, that this matter of publishing a law quarterly, to either take the place of or supplement the present annual book of proceedings, be referred to the incoming Executive Committee. Are you ready for the question?

MR. HUDSON: I have printed my proposal here and distributed copies to a number of you. I don't care particularly about substituting anything for the annual report of the Association. I think an annual report is very necessary. But the Massachusetts Bar Association has worked out a very admirable scheme in the last two years. They publish an annual report of the Association, but it is published in the shape of a number of their law quarterly, which appears just after their annual meeting. I am proposing a quarterly bulletin to be sent out by this Association, the number after the annual meeting to contain a report of the annual meeting and the number before the annual meeting to contain announcements, and committee reports to be

discussed at the annual meeting. The other two numbers might be devoted to the things that Mr. Robbins mentions. The suggestion was made whether it would be made up in permanent form to go on the shelves—I suggest that it could be bound to go on the shelves, as any other book. I believe our Executive Committee would consider all of the proposals that have been made this morning and would turn all these considerations over. We ought to empower them during the morning here to act as they see fit. I am willing to trust the Executive Committee. It is very important that we have something now to put into the hands of this Association to make its work more effective in the state. We are about to undertake a legislative campaign in the state. What could be more serviceable to a legislative campaign in this state than a report of this kind? We are about to undertake a campaign of membership enlargement throughout the state. What could be more serviceable in this work than a quarterly bulletin? I propose that a committee be put in charge of the editorial work of this bulletin and to see to it that no man puts such a bulletin into his waste basket. I trust that the amendment offered by Mr. Halliburton and Mr. Robbins will not carry, but that my motion will be carried,—to refer the matter to the incoming Executive Committee, with power to act.

MR. PIATT: Does the constitution require that the report be printed in book form?

THE PRESIDENT: My impression is that it does. The status is this: a motion was made to refer this whole matter to the Executive Committee, with power to act. The amendment is to refer it to the Executive Committee to report back next year.

MR. TODD: I rise to a point of order, suggested by Mr. Piatt. If the constitution provides for the publication of these annual reports, we are out of order if we undertake to change the matter in this way.

THE PRESIDENT: The Chair would rule, as to that, that the Executive Committee is not obliged to violate the consti-

tution. I want to say just a word on this subject, and I call Mr. Harkless to the chair.

Mr. James H. Harkless, of Kansas City, in the chair.

SENATOR McDAVID: Brethren of the Bar: I do not belong to any inside circle that is trying to run this Association. I know of none, but if there is such I am not a member of it. I take the floor to give you the benefit, as you are entitled to have it, of my experience in trying to be the President of this Association during the past year. The truth is, as I stated yesterday, that we have in our Bar Association in this state absolutely no teamwork. We have absolutely no means of communication. We are not acquainted with each other. We are not in touch during the year. We meet once a year and the occasion is a pleasant one, and nobody enjoys it more than I do, but if we are to be an effective instrumentality in carrying forward any sort of work we are bound to be organized, and we can't be organized unless we have some means of communication. I think that this ought to be referred to the Executive Committee with power to act. Not with power to suspend the publication of the proceedings, if the constitution requires it, of course,—and I don't know that I want to suspend the publication of these proceedings in present form, but I hope that the incoming officers may be able to find the funds to publish a quarterly such as they have in other states, that we may have such a publication and that we may begin on the work to bring about better results than we have in the past. It is not a reflection on the past, but a desire on my part, and shared by you, to form an organization more cohesive. I say to you that if you will get out a bulletin it will keep the country members informed, will keep them interested in what we are doing, and they will take more interest in the work generally. They feel that they send their \$5 here and we use it in a great meal we have here, but if you give them something for that \$5 we would have a strong argument for an increase in membership, and therefore would have an increase in funds, and I think we ought to begin the publication

if the finances will justify it, for that purpose, and that this should be referred to the Executive Committee with power to act.

President McDavid resumed the chair.

THE PRESIDENT: The question now is on the original motion: that the matter of publishing a quarterly bulletin be referred to the incoming Executive Committee with power to act.

Which motion was, after *viva voce* vote, declared duly carried.

THE PRESIDENT: This brings us to our regular programme, as you will find it on the printed programme, at 10 A. M., the subject of "Legal Biography."

MR. J. C. JONES: Before you proceed with that, Mr. Chairman, I would like to urge all members not here yesterday to sign the cards indicating whether or not they are going on that boat trip this afternoon, so we can, by noon, give the order to the Club for the necessary covers tonight.

THE PRESIDENT: Brethren of the Bar: The programme this morning calls for the offering of memorials and tributes of respect to those who have, during the year, passed on. The list includes a goodly number, and among those are some of the most faithful members of this Association. A reading of the list will disclose to you that you have attended few meetings in the past years but that these men have been present. The first on that list is a memorial on the life of Judge William M. Williams, which was to have been offered by C. D. Corum. I have not seen him here and don't know whether anyone is representing him. Can anyone give me information on that subject? We will pass that for the present. On the life of A. L. Thomas, by Thomas Hackney.

MR. HALLIBURTON: I saw Mr. Hackney and he said he had the address about ready, but he thought he could not be here and if he didn't get here he would like an order to have it printed in the Minutes.

THE PRESIDENT: That will be done, I am sure, and it is so understood.

(See page 197.)

THE PRESIDENT: On the life of Charles W. Sloan, by Judge A. A. Whitsett, of Harrisonville.

Judge Whitsett read the address, which will be found on page 189.

THE PRESIDENT: Mr. C. D. Corum will now offer a memorial to the life of Judge W. M. Williams.

Mr. Corum read same, and it will be found on page 193.

THE PRESIDENT: Is there any other member here who desires to say a word as to the life of Judge Williams? You will file your paper with the Secretary at the proper time, Mr. Corum.

MR. F. N. JUDSON: I would like to add a word of my own to what has been very beautifully said of Judge Williams. It has been my lot to have been associated with him many times at the bar and I was associated with him, on opposite sides of a very important case,—the last case in which he did any work. As you all know, Judge Williams rendered very distinguished public service. He was a member of the Supreme Bench by appointment for some months but declined to submit his name as a candidate. I remember talking to him and urging him to become a candidate, for in that brief period he showed remarkable fitness in the poise of his mind and in the singular lucidity of his statements, but he felt that he was not in a position to go into a campaign for a nomination. I had the privilege of serving with Judge Williams on the State Tax Commission some years since and he was always ready to render public service when he was called upon. I feel that I have lost one of my best friends, the Bar has lost one of its most distinguished ornaments in the state, and the state itself has lost one of its most noble citizens.

THE PRESIDENT: The memorial on the life of James D. Barnett, by Mr. P. H. Cullen, of St. Louis.

(See page 200.)

THE PRESIDENT: On the life of W. H. Brown, by Mr. John T. Harding, of Kansas City.

(See Memorial Addresses.)

THE PRESIDENT: On the life of Henry C. McDougal, by Mr. Clarence Palmer. Mr. Palmer is recognized.

Mr. Palmer presented his address, which will be found on page 182.

THE PRESIDENT: The death of T. C. Dungan was reported to the officers of the Association, and the name was printed, but no one was assigned to prepare a memorial. I do not know that one has been prepared. If there has been, or shall yet be, it will be printed with the other proceedings of the Association. This closes this part of our programme, and at this point I want to make an announcement. At 2 o'clock, or on reconvening after recess, I desire the list of Vice-Presidents and members of the General Council reported to this body. The various circuits, or the lawyers from the various circuits, may make their own arrangements about where and when they shall meet, but we want these reports in here at 2 o'clock this afternoon. This brings us to the Report of the Special Committee on Legislation and Remedial Procedure.

MR. F. N. JUDSON: Mr. Chairman, before the Association passes from this subject of memorials, I think mention should be made in our record of the fact that in the past year the Clerk of the Association appointed committees to commemorate the death of three Judges of the Supreme Court, Judge Elijah H. Norton, Judge John C. Brown, and Judge Warwick Hough. I presume they will all be filed with these memorials and I may say that in presenting the memorial on the death of Judge Hough, I was associated, in April last, with the Honorable W. M. Williams,

of whom memorial has been presented today, and I would suggest that these memorials which have been filed with the Supreme Court be filed with the Association.

THE PRESIDENT: I should have announced to the Association that during the year I appointed three committees for the purpose of preparing and presenting to the Supreme Court memorials of three former members of that Court, Judge Hough, Judge Norton and Judge Brown, then a member of the Court, and this work was done by these committees, and with your consent the report of those committees will become a part of the proceedings of this day under this head. There being no objection, that will be the order.

(See memorial address of Judge Hough, on page 177.)

THE PRESIDENT: We now take up the report of the Special Committee. Judge David H. Harris is chairman of that Committee.

JUDGE DAVID H. HARRIS: Mr. President, you will recall that last year there was presented a report made by the Committee on Judicial Administration and Legal Procedure, of which Judge Faris was the chairman, which was referred to a special committee to be appointed and which was appointed by the incoming President, together with a report that had been made by the Code Commission of two years before, with instructions to the committee to solicit and receive suggestions along the line of their work from the bar generally, of the state. This committee sent out, as you doubtless know, a circular letter the early part of this year, requesting suggestions from the members of the bar along the line of amendments to our civil and criminal codes. Many replies were received. The first meeting of the committee was held in Jefferson City and the work was divided, and the various subjects were referred to several sub-committees. Subsequently these sub-committees reported and another meeting of the entire committee was held in Kansas City and the whole matter gone over again

there. The conclusions or recommendations of this Special Committee of yours have been embodied in eight proposed legislative bills, which you will find set out in the report of the committee which is now in your hands, and has been for the last three or four weeks. It has been assumed that the various members of the Association have read these bills and that you are here now to discuss them on their merits, either to approve in whole or in part or reject, as you see fit. I may say that of the sixteen members of this committee, one, Mr. D. W. Hill, was unable by reason of other engagements to act with the committee.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL PROCEDURE.

This report of the Committee on Judicial Administration and Legal Procedure was taken up by the Association and discussed at various times during the meeting. This discussion was very lengthy and was indulged in by a large number of lawyers of the Association, but it is deemed proper that the discussion of that measure and the various views of the parties discussing it, should not be inserted in this report, but that there should be stated the names of the parties who engaged in the discussion and the final result thereof.

This report was debated and redebated by the following members of the Association:

JUDGE DAVID H. HARRIS
F. M. JUDSON
A. F. SMITH
PIERRE R. PORTER
ROBT. LAMAR
L. C. KRAUTHOFF
JAMES C. JONES
E. M. GROSSMAN
BEN TODD
JAMES H. HARKLESS
EWING COCKRELL
JUDGE HUGO MUENCH
J. T. WHITE
CHARLES L. HENSON
JUDGE JOHN A. BLEVINS
VIRGIL V. HUFF

GEORGE A. MAHAN
J. W. HALLIBURTON
W. H. H. PIATT
HOMER HALL
MANLEY O. HUDSON
JUDGE JOHN T. STURGIS
JUDGE W. O. THOMAS
ALEX. H. ROBBINS
J. C. KISKADDEN
CHARLES P. WILLIAMS
THOS. B. WHITLEDGE
A. S. CUMMINGS
FRED W. LEHMANN
CHARLES A. POWERS
JUDGE W. L. STURDEVANT
JOHN I. WILLIAMSON

The final result was a unanimous adoption by the Bar Association of certain bills to be recommended to the Legislature for passage at its coming session. These bills were eight in number.

1. A bill to amend the statutes in reference to land titles, actions to establish evidence of and to perfect by adding a new section prescribing a form of notice of publication. The object and purpose being to have a uniform recognized legislative worded form.

2. A bill to provide for the appointment of commissioners in the St. Louis Court of Appeals and prescribing their duties, etc.

3. A bill to repeal certain sections of the statute and adopt new ones pertaining to evidence and relating to the procuring, competency, introduction and preservation thereof.

4. A bill amending certain sections of the statute providing for the holding of special terms of court and taking care of the trial of cases unfinished at the end of the term, etc.

5. A bill repealing certain sections of the statute and enacting new ones in lieu thereof so as to create an improved method for disbarment of attorneys and counselors at law and to define their duties and the procedure in disbarment.

6. A bill to amend the statute in reference to the common law of England so as to provide that no act of the general assembly or law of the state shall hereafter be held to be invalid or limited in its scope or affected by the courts of this state for the reason that the same might be in derogation of or in conflict with the common law or with the statutes or acts of parliament, and providing that the law of the general assembly shall be liberally construed to effectuate the true intent and meaning thereof.

7. A bill to repeal a large number of the sections of the statute and enact new ones in lieu thereof in reference to the civil procedure and general code. This was looked upon as one of the most important bills under the discussion and is one that has given much concern and interest to lawyers and courts for it goes to simplify the general practice very materially.

8. A bill to repeal a large number of sections of the statute and enact new ones in lieu thereof in reference to the criminal procedure so as to eliminate many of the technicalities and unnecessary procedure pertaining thereto and to simplify and make same the practice in reference to criminal procedure.

These bills are not set forth in this report for the reason, first, that they are very lengthy, and second, for the reason that they are to be introduced in the Missouri Legislature at the coming session and copies can easily be procured when introduced.

It is proper, however, to state here that the President did cause some 400 or 500 copies of these bills, as they came from the Association, with

its approval, to be sent out to members of the Legislature, Judges of the Circuit Court of the state and distributed largely among the members of the Bar. These bills, it is hoped, will be passed by the Legislature at the coming session substantially as recommended by the Bar Association.

It was further thought that all of the discussion in reference to these bills should and ought to be eliminated inasmuch as the final result was a unanimous approval of the bills in their present form. The discussion was largely about matters which were not approved and did not meet the unanimous opinion of the Association, but the above mentioned bills having received the unanimous endorsement, we look forward to the hope that they may be approved.

It was here announced that the Hon. Henry D. Clayton, of Alabama, Judge of the United States District Court, would speak at luncheon to be given at noon today at the Mercantile Club.

Recess for noon.

WEDNESDAY, SEPTEMBER 27, 1916, 2 P. M.

AFTERNOON SESSION.

THE PRESIDENT: At this time, and while a conference is being held between some gentlemen holding different views about pending questions, we will take up some merely formal matters. Judge Thomas, of Kansas City, has a matter which he wants to bring to the attention of the Association.

JUDGE THOMAS: Mr. Chairman, I think the motion will express what I have in mind. I move the acceptance on the part of this State Bar Association of the provisions of a resolution adopted by the American Bar Association, whereby the President of this Association if a member of the American Bar Association shall be, *ex officio*, a member of the General Council, and the Secretary of this Association shall be, *ex officio*, a member of the Local Council, of the American Bar Association.

Seconded. Question called for. Upon *viva voce* vote, the motion unanimously carried.

MR. PIATT: Mr. President, speaking for the special committee appointed yesterday: We, your Committee, report as follows:

We recommend that the President of this Association appoint a committee consisting of a member from each judicial circuit of the state, which committee shall be charged with the duty of organizing a local Bar Association in each county of the state and judicial circuit thereof, not now having such an Association, and with formulating a plan for co-ordinating all local Associations with this Association.

W. H. H. PIATT,
OAK HUNTER,
JOHN T. GOSE,
ROBERT LAMAR,
HUGO MUENCH.

Upon motion to approve the recommendations of this report, same was unanimously carried.

MR. KRAUTHOFF: Mr. President, I offer an amendment to the constitution, as follows:

Amend Article Three of the Constitution by adding after the words "5. On Grievances" the words "6. On Uniform State Laws."

I move the adoption of that amendment.

MR. M. O. HUDSON: I second the motion.

MR. KRAUTHOFF: There is, as you know, an organization in the United States called The National Conference of Commissioners on Uniform State Laws, in which body this state was represented for many years by Mr. Taylor, and at the present time the state of Missouri has the honor to be represented by Mr. Judson, and I have the honor to be a member from Missouri. That Conference has approved 21 uniform laws, and of those the state of Missouri has only adopted two—one on negotiable instruments, and one on warehouse receipts. Outside of this Association, I find that my attendance upon the meetings of the National Conference brings me in touch with the most intellectual body I have ever witnessed. That Conference requests that

we have a Committee on Uniform State Laws, who may be brought into touch with this Conference and become acquainted with the uniform state laws that have been adopted. In about 36 per cent of the cases that have been decided that might have been decided under the statute, the lawyers never cited the statute at all. In many cases, lawyers have not discovered that there is such a thing as a uniform negotiable instruments act. My amendment simply creates a Committee on Uniform State Laws.

Upon vote, the proposition to amend the Constitution as above unanimously carried.

MR. E. M. GROSSMAN: In order to carry into effect the suggestion made in the President's address, with reference to recommending to the legislature that a Commission be appointed to prepare a revision of the statutes for the revision session of 1919, I move that that section of the President's report be approved by this Association and that it be referred to the Legislative Committee for the purpose of having drafted a proper bill covering this subject, to be presented to the legislature for enactment.

Which motion was seconded and, upon vote, carried unanimously.

THE PRESIDENT: If you expect to attend the banquet tomorrow night you ought to get your tickets. You are entitled to a ticket if you have paid your dues, and you ought to pay your dues if you haven't. Now there is a trip on hand this evening and we are going to adjourn this meeting shortly. We have only a few minutes more. We can't complete the consideration of this report anyhow. I am asked to announce that the boat will be well protected and covered from the weather and you should not stay away on account of any possible inclemency of the weather. It is moved by Judge Harris and seconded by Judge Muench that we now adjourn until tomorrow morning at 10 o'clock.

JUDGE HARRIS: No, I didn't do it. (Laughter.)

THE PRESIDENT: The ayes have it.

Adjournment accordingly.

NOTE: The members of the Association were the guests of the St. Louis Bar Association on a steamboat ride up the Mississippi to the Riverview Club, where a delightful dinner was served, followed by speeches, and "The Seven Ages of a Lawyer," a musical allegory written by Douglas W. Robert of the St. Louis Bar, and presented by Mr. Robert and Company.

THURSDAY, SEPTEMBER 28TH, 10 A. M.

MORNING SESSION.

THE PRESIDENT: The gentlemen who were not with us last night out on the river will please excuse the absence of those who are not here. They evidently "heard the last speech." Has any member a resolution to submit at this time, or any miscellaneous business before we take up consideration of the regular programme?

MR. JOHN I. WILLIAMSON: Mr. President, in behalf of the Committee on Constitutional and Statutory Amendments, I think it would be well, in order to save time now, to state the salient features of a report to be submitted later in written form. The Committee was requested to prepare and submit to the Association some method to use in lieu of the primary election for judges. The Committee has adopted a report which will be submitted to the Association when written out, which provides in substance this: At the general primary election, delegates shall be selected to a judicial convention. In cases where one county composes an entire judicial circuit, that convention will nominate the circuit judge for that county and will also choose delegates to the court of appeals judicial conventions and to the supreme court judicial conventions. In the event the circuit is composed of more than one county then the delegates chosen at the general primary will select delegates to the judicial district convention to nominate circuit judges. There is this proviso:—it is well known that the evils of the primary system are greater in the cities than in the

rural counties—now in judicial circuits that do not contain a county having a population of 100,000 or more, the judicial committee of any political party may provide for the nomination of its candidates for judgeships by general primary. That is the substance of the report. I state it now that you may have it in mind and be prepared when the Committee Report is submitted to the Association, to act upon it.

THE PRESIDENT: Members will not forget that tonight we will have our banquet and if you haven't your ticket, see the Secretary. We will hear the report of the Committee of the General Council—

MR. WILLIAMSON: Pardon me. I have been handed a typewritten report of the Committee on Constitutional and Statutory Amendments, of which I was just speaking, which I will file with the Secretary, and personally I would like to have the matter taken up and passed on during the day some time—whenever the Chair thinks proper.

THE PRESIDENT: Very well. Mr. Secretary, read the report of the General Council.

THE SECRETARY: (Reading).

St. Louis, Sept. 27, 1916.

The General Council makes the following recommendations for officers of the Missouri Bar Association for the ensuing year:

JAMES H. HARKLESS.....For President
GEORGE H. DANIEL.....For Secretary
A. STANFORD LYON.....For Treasurer

For Members of Executive Committee } FRANK M. McDAVID
 J. M. LASHLEY
 S. OAK HUNTER

J. B. TODD,
Sec'y General Council.

It was moved, seconded and unanimously carried that the report of the General Council just read be accepted and that the gentlemen therein named and nominated for official positions be declared the officers of the Association for the coming year.

THE PRESIDENT: The Chair regrets we haven't time to hear from all of these gentlemen. All of them, it may be presumed, are ready to make speeches. The Secretary will call the roll of the judicial circuits and, as called, the gentlemen present from the circuit named will announce the members of the General Council for that circuit for the coming year, and vice-president.

The announcements, or recommendations, follow:

Circuit	Member of General Council	Vice-President
1st	F. H. McCullough, Edina	Jas. A. Covey, Kirksville
2d	John T. Gose, Shelbyna	Vernon L. Drain, Shelbyville
3d	Platte Hubble, Trenton	L. B. Woods, Princeton
4th	J. R. Williams, Savannah	Jno. M. Dawson, Maryville
5th	J. H. Hull, Platte City	A. D. Burnes, Platte City
6th	Vinton Pike, St. Joseph	Thos. B. Allen, St. Joseph
7th	Newland Conkling, Carrollton	Frank P. Divilbiss, Richmond
8th	A. O. O'Halloran, St. Louis	Hugo Muench, St. Louis
9th	M. J. Lilly, Moberly	A. W. Walker, Fayette
10th	Madison C. Schofield, Hannibal	W. T. Ragland, Paris
11th	W. B. M. Cook, Montgomery City	E. S. Gantt, Mexico
12th	Roy W. Rucker, Keytesville	Fred Lamb, Salisbury
13th	A. E. L. Gardner, Clayton	G. A. Wurdemann, Clayton
14th	A. T. Dumm, Jefferson City	John G. Slate, Jefferson City
15th	Joshua Barbee, Marshall	Samuel Davis, Marshall
16th	John I. Williamson, Kansas City	Harris Robinson, Kansas City
17th	A. A. Whitsett, Harrisonville	Ewing Cockrell, Warrensburg
18th	Herman Pufahl, Bolivar	C. H. Skinker, Bolivar
19th	Robert Lamar, Houston	Leigh B. Woodside, Salem
20th	W. H. D. Green, West Plains	E. P. Dorris, Oregon
21st	J. B. Daniel, Piedmont	E. M. Dearing, Potosi
22d	A. T. Welborn, Bloomfield	W. S. C. Walker, Kennett
23d	J. B. Todd, Springfield	Guy D. Kirby, Springfield
24th	Leslie D. Rice, Neosha	Chas. L. Henson, Mount Vernon
25th	Frank L. Forlow, Webb City	D. E. Blair, Joplin
26th	Harry W. Timmonds, Lamar	Berry G. Thurman, Nevada
27th	Ben H. Marbury, Farmington	Peter H. Huck, Ste. Genevieve
28th	A. P. Stewart, Cape Girardeau	Frank Kelly, Cape Girardeau
29th	P. A. Parks, Clinton	C. A. Calvird, Clinton
30th	R. S. Robertson, Sedalia	H. B. Shain, Sedalia
31st	J. William Cook, Crane	Fred Stewart, Ava
32d	James Booth, Pacific	R. A. Brener, Pacific
33d	L. M. Henson, Poplar Bluff	J. P. Fourd
34th	M. O. Hudson, Columbia	David H. Harris, Fulton
35th	J. D. Hostetter, Bowling Green	E. B. Woolfolk, Troy
36th	F. S. Hudson, Chillicothe	Arch B. Davis, Chillicothe
37th	Theo. L. Montgomery, Kahoka	N. M. Pettingill, Memphis
38th	H. C. Riley, Jr., New Madrid	Sterling H. McCarty, Caruthersville

THE PRESIDENT: What shall we do with these announcements?

JUDGE HALLIBURTON: There isn't anything to do but accept them.

THE PRESIDENT: The motion might be made, or it be taken by consent that this list might be completed later and that it be published as handed in. That will be the order unless there is objection. There is no objection.

SEN. F. S. HUDSON: Mr. President, I have a resolution I desire to offer.

THE PRESIDENT: Very well, read it.

SENATOR HUDSON: (Reading) "Resolved: That the Missouri Bar Association expresses its deep sense of appreciation to the officers and members of the St. Louis Bar Association for the many kindnesses and courtesies extended, and for the splendid entertainment furnished to the members in attendance at this session;

And be it further resolved: That we extend our thanks to the officers and members of the Mercantile Club for the use of its Club rooms, and the many favors shown the members of this Association during its several sessions."

The motion to adopt the resolution was unanimously carried.

MR. M. O. HUDSON: President McDavid and Mr. Clifford B. Allen, the Secretary of the Board of Bar Examiners, called a special conference on Legal Education and Admission to the Bar, which met on Tuesday evening—their meeting was announced to the members of the Association and was open to all members of the Association. The persons who attended this conference requested me, as temporary chairman, to offer this resolution to the Association:

(Secretary here insert same.)

MR. HUDSON: This action was taken, Mr. Chairman, because the Legal Education section of the American Bar Association has done very effective work there and those of us who are specially interested in this subject in Missouri desire to do a similar work here.

The resolution, upon motion, was unanimously adopted.

MR. HUDSON: The Conference also adopted a resolution unanimously that the Board of Examiners be requested to secure, if possible, from the Supreme Court a rule requiring three years of study by applicants for admission to the bar, either in a law school or under an accredited preceptor. This resolution was unanimously adopted by the conference. It has been strongly supported in the past by the members of the Bar Examiners' Board. It is now supported by all the law schools in the state and the Conference desires the approval of that resolution by this Association.

JUDGE HALLIBURTON: I don't think the Supreme Court has got any power to make that rule whatever. If they want that rule they should go to the legislature.

MR. E. A. KRAUTHOFF: May I inquire what is meant by the term "accredited preceptor?" I don't know of anyone in Missouri who answers to that name. What is a man to do? Is there to be one in each county of the state, or how is that? I am not against this, mind you, because I remember when I started in a law office I was turned loose without anybody paying any attention to me and at the end of two years and a half I had not finished Kent's "Commentaries". I have always felt that I lost some time there and have been trying to catch up with it, but to throw this loose in this way—that would be very unfortunate. I offer as a substitute that the resolution be referred to the Committee of Bar Examiners. They don't need the instruction of the Association on this. It seems to me this would be very misleading and no one would know where to find an "accredited" preceptor.

MR. ROBBINS: Mr. President, may I suggest that the Board of Examiners and the Committee on Legal Education of this Association were present with the committee and recommended the adoption of this resolution. The "accredited" instructor is every lawyer admitted by the Supreme Court.

MR. KRAUTHOFF: Then I move to strike out the word "accredited" and substitute in lieu thereof "a lawyer admitted to practice by the Supreme Court of Missouri".

MR. HUDSON: We accept that amendment.

JUDGE HALLIBURTON: I would like to know where they are going to get the authority to do that.

THE PRESIDENT: The Supreme Court is supposed to find it.

JUDGE HALLIBURTON: It takes an act of the legislature. The Supreme Court hasn't the power to do that thing.

THE PRESIDENT: The Chair calls on Judge Faris on that. This is not a judicial question, but a question of practice that we would like to hear Judge Faris on.

JUDGE CHARLES B. FARIS: What is the question?

THE PRESIDENT: A resolution was read here by Professor Hudson, asking this Association to have the Bar Examiners to ask the Supreme Court for a rule making certain requirements as to the number of years to be used by a student of the law in study, either with a law school or with a duly accredited preceptor,—or "a practicing lawyer" it is, now,—the "accredited preceptor" having been stricken out. The question is raised by Mr. Halliburton that the Supreme Court has no authority to make such a rule, and the legislature is the forum to which we should go.

JUDGE FARIS: The present system, as you will recall, is due to a statute which this Association had passed after about twenty years of work. It took the Missouri Bar Association—those of you who have been members a long time will recall—it took the Missouri Bar Association almost twenty years to get the present statute on the books. They recommended it time after time and it was finally passed by the legislature after many vicissitudes and efforts on the part of the Association. So far as I know, the present system and the present statutes have worked well. I am frank to say that I think the Supreme Court would perhaps be a lit-

tle slow to attempt to trespass upon the field covered by this statute. To my own knowledge, it has worked well. The Board of Law Examiners have done their work well and I have no suggestion now that I feel like making on it.

MR. HUDSON: The proposal had its origin with the Board of Law Examiners, itself. The proposal did not come from any of our law schools or the law school men. My first impression was the same as yours, Mr. Halliburton, but the present statute authorizes the Supreme Court to prescribe rules of court governing the admission to the bar and it gives rather plenary power in that behalf. I don't speak for the Board officially, but for certain members of the Board who have been working on it,—these members of the Board came to the conclusion that the Supreme Court had this power. All of the law school men who attended the conference the other evening, and we had about seventeen there, were of the opinion that the Supreme Court had the power. Certain members of the Board of Bar Examiners are anxious that a rule of court should be promulgated and so are the law school men. Missouri is one of the very few states of the Union that has no period of prescribed study required for admission to the bar. Most of the states of the Union require three years of study, either in a law school or in a law office. In Missouri, it is possible for a man to be admitted to the bar who has studied only in a correspondence school of law for only six weeks, if he can pass the examination, and the Bar examining committee have a great many students to examine and many times students pass who have only studied a few months. We desire to bring Missouri into line with the states around us. We don't require that the study be in a law office or in the school—one or the other—the law school teachers and the Bar Examiners are in accord on the proposition, and that the Supreme Court has the power to promulgate such a rule. This Association has in the past entertained reports of the Committee on Legal Education, which has at various times recommended such a thing as a prescribed

time for law study. If I remember rightly, Mr. Lozier recommended it in his presidential address a few years ago.

MR. J. B. DANIEL: Mr. President, I come from a section of the Ozarks where most of us go to law school in the law office. I studied for years in the law office, and I think it matters not where we learn the elementary principles of law, if we have learned them. It is not a question of how long we have been trying to find out, but how much we have learned. We have a law now requiring high school education. There are many struggling young men from our section of the state who expect to be admitted to the bar, and I say it matters not whether they got that information from a correspondence school of law, or at home, without being in a lawyer's office, or where they got it. Our present law authorizes them to be admitted to the bar, provided they have learned those elementary principles, and therefore I am opposed to the resolution. (Applause).

MR. HUDSON: My friend is in error in saying that the present statute requires a high school education or its equivalent. It requires only a grammar school education, with some knowledge of literature, history, and civil government, and it requires examination in certain subjects. It does not require any particular period of legal study, though the Board requires an applicant to state that he has studied a textbook in each subject in which examination is given.

JUDGE HALLIBURTON: Mr. Hudson, I want to ask you a question: If a man is able to pass the examination, why is it necessary that he should read three years or four years or one—

THE PRESIDENT: The question will be answered by the vote on this resolution.

The question being put, upon *viva voce* vote the Chair was in doubt. On a standing vote, 36 voted "aye", 30 noted "no". The resolution was accordingly declared adopted.

THE PRESIDENT: I call for an address which you will find on the programme as of this date on "Some Needed

Changes in the Rules of Evidence", by Judge Frank P. Divelbiss, of Richmond, Missouri, who will come forward. (Applause).

JUDGE FRANK P. DIVELBISS: Mr. Chairman, we have heard some very able suggestions as to conferring upon the Supreme Court the power to enact certain changes in the rules of procedure. In my little talk I expect to insist that the Supreme Judges exercise some powers they already have in regard to the correction of abuses in the rules of evidence. I do it for two reasons: First, they ought to be better qualified than anybody, and, next, the great trouble we have in getting anything through the legislature along this line. I do not mean to cast any reflection upon the legislature or its ability, but you who have been there trying to get bills of this sort through have found yourselves very much in the condition of a darkey who had a dream, and, unlike most other fellows, he dreamed that when he died he went down, instead of up. He said he dreamed that he was on a special train of fourteen cars from Kansas City, loaded to the guards. He was down there two or three days when he had a call on the long distance 'phone and he found it was from a fellow who had gone the other way. He said, "Is this George Smith?" "Yes, suh, this am George." "How are you getting along down there?" "Oh, getting long pretty well. Don't you believe the stories they tell about it. You meets lots of your old friends here. It's a little sultry, but it ain't so bad." "What do you have to do down there?" "Oh, shovel a little coal." "How long do you have to work?" "Oh, about one hour out of twenty-foh. What are you doing up there?" "Ain't gittin' along very well—got to work too hard." "Why, what you got to do?" "Oh, I got to hang out the sun and moon and stars, and shove dese clouds aroun' and sweep dese golden streets." "How long you got to work?" "Got to work 24 hours a day." Foh the Good Lawd,—what's the matter up theah?" "Oh, go on man, we're pow'ful short on help!" (Laughter).

Now I am going to read a quotation from the Supreme Court of the state of Missouri:

SOME NEEDED CHANGES IN THE RULES OF EVIDENCE.

"Bench and bar almost universally concede that there is no branch of our jurisprudence in which there exist more glaring defects and discrepancies, and in which there is a more crying need of reform, than exist in our present strict and antiquated rules of evidence. All concede, bench, bar and laymen, that the attempted application of our strict, crabbed, century-old rules of evidence, in many cases to our present-day conditions of advanced thought, science and invention, is a laughable anachronism on a parity with the eighteenth century blood-letting of an anæmic and denial of water to the fevered. All concede that it is high time to lop off some of the branches, which died of old age a century ago, and to let in the light by which justice may be seen and done. All concede that the application of these outgrown rules causes daily miscarriages of justice, yet withal, we hitch ourselves fast to *Stare Decisis*, and no one moves toward betterment. The way to reform these in many cases conceded bad rules, is to reform them, and the way to move toward better, wiser, more just and more logical conditions is to strike heavy-handed such antiquated rules of evidence as allow outrageous injustice to be perpetrated, in the open light of plain reason and common sense, in the name only of *Stare Decisis*."

The above quotation is not from the columns of some muck-raking magazine, crusading against the established order of things simply because of its antiquity, nor from the frenzied lips of some excited reformer whose only tool is a hammer, nor an iconoclast whose vocabulary is measured by the one word "destroy," nor is it the lamentation of some disappointed disciple of Blackstone who, not possessing the grit and gumption necessary to fight and win in the battles waged on forensic fields, has made a failure and puts the blame, not on himself, but upon the law and therefore condemns the whole legal system. It is the severe and stinging indictment of our system of evidence preferred, if you please, by that staid and conservative body of jurists, the Judges of the Supreme Court of Missouri, in solemn consultation assembled.

The true and only object of the law of evidence is the ascertainment of the truth, to the end that justice may be attained.

With this as a test, let us briefly examine some of the rules of evidence in force in Missouri today:

As a preface, I should remark that when I refer in this talk to the power of the courts over the rules of evidence, I must necessarily be understood as referring to the Supreme Court, because, under our Constitution, it is the mandatory duty of the trial court to follow the decision of the Supreme Court on any question, whatever the trial court may think of the wisdom or fallacy of the appellate court's ruling.

By statute, husband and wife are made competent to testify in divorce suits. The appellate courts of this state have held, however, that either spouse may insult, abuse, vilify and blackguard the other, falsely accuse each other of unfaithfulness and adultery, thereby subjecting one another to the greatest indignity known to the law; yet, when the other would give evidence of these facts, the same courts put their hands over his or her mouth and say, "You cannot detail these disgusting facts."

In *Miller v. Miller*, 14 Mo. App. 418, the St. Louis Court of Appeals, following the Supreme Court rule as announced in 51 Mo. 118 and 51 Mo. 539, held the lower court erred in permitting the husband to testify to a state of facts showing that the wife was in a constant habit of assailing the husband with vile and abusive language, applying to him the most revolting epithets, and accusing him of having committed adultery with various women, including his step-daughters and his own sisters.

It is the boast of our profession that the law is the perfection of human reason. Where is the reason or the common sense of saying to the husband or wife, "This conduct of your spouse is good ground for divorce," and then prohibit the only witness who can possibly know these things, from detailing such facts to the court—for surely such conduct on the part of the offending spouse would seldom, if ever, occur except when they are alone.

And what do you suppose is the reason given by the court for this harsh and unreasonable rule forbidding the wife or husband to give such testimony? "It would be against public policy to allow either spouse to testify to these accusations and epithets." "Husband and wife should not be permitted to detail conversations had in private because to do so would disturb their conjugal happiness and mar the peace and harmony of the home!" What a fine brand of harmony prevailing in that home where the wife, either with or without cause, upbraids and accuses her husband of adultery with his own sister! Besides, if the husband or wife knew when these revolting accusations were made they could be related in open court by the injured and insulted spouse, would it not have a tendency to curb their lips and bridle their tongues and thereby lessen rather than increase the danger of rupturing the already strained marital relations?

In the *Miller* case, the Court of Appeals apologized for such a position, but excused itself on the ground that our Constitution requires the Court of Appeals to follow the last previous holding of the Supreme Court. In passing, it is to be noted that the *Miller* case was affirmed by the Court of Appeals because there was ample evidence to justify the divorce after disregarding the testimony of the husband as to these revolting accusations of the wife.

It is true the same Court of Appeals, in the case of *Meyer & Meyer*, in the 158 Mo. App., failed to follow the Supreme Court, and held that the husband or wife could give testimony in relation to such vituperation and abuse upon the part of the other. Strange to say, however, the Court professes to follow and not to repudiate the Miller case. The Court, evidently, either did not read its former opinion in the Miller case, or else made up its mind to break away from the vicious doctrine therein contained. In doing so, it, in effect, overruled all its former decisions on this point, together with the decisions of the other Courts of Appeals and the Supreme Court as well.

Upon sober reflection, this same Court, as was its constitutional duty, at the very first opportunity, receded from the Meyer case and again followed the decisions of the Supreme Court. *Gruner v. Gruner*, 183 Mo. App., l. c. 171. And in the later case of *Yeager v. Yeager*, 185 S. W. 743, the Court squarely overrules the Meyer case "in order," says the Court, "that it may not hereafter mislead courts or counsel."

But why should not the husband or wife be permitted to testify in any case regardless of whether the other spouse be a party or not, saving always, of course, those communications confided by each to the other under and by reason of the sacred and confidential relation existing between husband and wife?

Remember the object of all trials is the ascertainment of the truth. In such a quest, why should we shut our eyes to light from any source? Why should we stop our ears to any source of information? Does it not often happen that the husband or wife, from the very nature of things, is the only one that can give first-hand, trustworthy testimony?

Let us briefly examine the reasons given in opposition to the husband or wife testifying. There are usually three: First, Identity of interest. Second, Great temptation to perjury. Third, Danger of disturbing the peace and harmony of the household. The first two are really but one, for the unity of the husband and wife, so much prated about at the common law, has always been a mere fiction, and has no place whatever in those jurisdictions where the modern statutes are in force emancipating married women from the rigor and tyranny of the common law. So, after all, the one great reason, if reason it can be called, is that the husband or wife could not be depended on to tell the truth when the other's interests were at stake. It was once the theory of our law that no man could be trusted to tell the truth in his own case, but we have advanced far enough that such an idea no longer prevails. Now, if the husband, as a party with his all at stake, is presumed to tell the truth when on the stand, why not accord to the wife, who certainly has no greater interest, the presumption of testifying truthfully? It is a poor estimate that the courts of Missouri place upon the womanhood of this State when they say that because one of her citizens is

the plaintiff in a replevin suit for a "muley" calf or a "runty" pig, his wife should be conclusively presumed to lie if she go upon the witness stand.

As to the next ground, that there would be danger of disturbing the peace and harmony of the household if the other spouse were allowed to give testimony in a party's behalf, it is difficult to understand how it would disturb the harmony of the home to permit the wife to take the stand and testify in behalf of her husband. Such, however, is the ruling in Missouri. Be it said to the credit of the Springfield Court of Appeals, it has made an innovation in the rules of evidence in this State on this particular point. In *Coy v. Humphrey*, 142 Mo. App. 92, that court held that the undivorced wife could testify on behalf of her husband in an alienation or criminal conversation suit to the extent at least, of the criminal relations existing between herself and the defendant. This was placed on the ground of public policy; that it was necessary that he who violates the sanctity of the home should be penalized therefor. This decision is eminently correct, although it cannot be said that it follows, in any sense, the last previous holding of the Supreme Court. But it seems to me that a broader and better reason could be given—it is necessary on the ground of public policy that the truth should be known in all cases; and if the testimony whereby the truth is to be ascertained lies in the breast of husband or wife, his or her lips ought to be made to open and the facts be brought forth, rather than that they should be sealed, the truth stifled and justice strangled.

What has been said in reference to the husband or wife testifying on behalf of the other, is equally applicable when they testify against each other. It is the truth and the truth alone that should prevail. If the facts be against the spouse, the other should not only be permitted but required to divulge them. The objections so often advanced that this should not be done is that it would cause discord and rupture in the family relation; that if the wife were required to give unfavorable testimony against the husband, he would drive her from his roof and the result would be the breaking up of the home. Another low estimate that the courts of Missouri have placed upon the manhood and chivalry of her citizens. But would such be the result? From the very beginning son has been required to testify against father and father against son. Is there a recorded instance of where a father ever drove his son from his home because he had the courage when placed under oath, to swear to the truth even though it were in some particular unfavorable to the father? In a number of jurisdictions this harsh, archaic, antiquated rule has been abolished by statute, and none of the evil consequences predicted has resulted therefrom. Neither can I now recall a single State that, having once abolished this rule, has ever returned to it.

There is another rule in vogue in this and other States that cannot be supported by reason, logic or sound, common sense. It is the rule limiting dying declarations to homicide cases only. It is sometimes called an exception to the hearsay rule. This is plainly an error because the rule admitting dying declarations is older than the hearsay rule itself. This kind of evidence was originally admitted in all character of cases, whether civil or criminal. It was admitted on the ground of necessity—the witness being dead, it was necessary to admit his dying declarations or lose his testimony altogether. It was admitted without oath on the theory that the declarant, standing in the presence of death, with full knowledge of his impending dissolution, would have every inducement to tell the truth, and that statements made under such conditions were as binding and entitled to as much credit as if delivered under oath. When a witness takes the oath, he is reminded that he does so in the presence of Almighty God, but the presence is not nearly so impressive nor so real as when he stands at the very brink of the grave. If, while in good health and with prospects of long life, as a witness stands with uplifted hand to take the oath, the admonition that he does so in the presence of the Almighty, has a tendency to elicit the truth, surely then when he stands with his feet pressing hard upon the banks of cold and chilly stream of death, fully realizing that his soul, naked and trembling, is rushing into the presence of his Maker to render unto Him that dread account, the contemplation thereof would be an all-sufficient incentive to him to speak the truth. Long before text-writers began to search for fanciful reasons to sustain this doctrine or judges began to apologize for enforcing so sensible a rule, Shakespeare, one of the most many-sided geniuses of the English speaking race, with his accustomed good, common sense and homely wisdom, makes the dying Count Melum in *King John*, say:

“Have I not hideous death within my view,
Retaining but a quantity of life,
Which bleeds away, even as a form of wax
Resolveth from his figure 'gainst the fire?”

“What in the world should make me now deceive,
Since I must lose the use of all deceit.
Why should I then be false, since it is true
That I must die here and live hence by truth.”

This gives the true reason for the rule and the only reason. That being the case, why should the rule be limited to homicide cases only? If a robber should accost you tonight and, in attempting to rob you, should inflict injuries which result in your death, your dying statement would be admissible against him on the trial for murdering you. But suppose, instead of inflicting injury upon you, he simply robs you tonight, and on the morrow you are by some other agency mortally

wounded and, with a knowledge of your approaching dissolution, you give a detailed statement of the facts connected with your robbery, what reason can there be given why the same should not be admitted on the defendant's trial for robbery? Take the case of a track-walker on a railroad engaged in the discharge of his duties at the dead hour of the night; an on-coming locomotive without headlight or warning, runs him down and mortally injures him when no one is near to witness the occurrence; before death he gives a dying statement detailing the facts of the accident; what reason can be given why his widow and orphans should be denied the benefit of such evidence? None can be given. None exists. As stated before, this sort of evidence was originally admitted in all kinds of cases, but the courts of this country and of England have, without reason, put these restrictions upon this character of testimony. It has sometimes been suggested that this sort of testimony should be admitted in homicide cases because the defendant, by killing possibly the only eye witness, might be permitted to go free; but if this were the true reason, then dying statements would only be admissible in the absence of eye witnesses to the killing. Such, however, has never been held to be the rule.

Another ground sometimes suggested against the admission of such testimony in civil actions is that the other party would be deprived of the right of cross-examination; but if that is a valid objection to the admission of this character of testimony, in the name of God, who is more entitled to the right of cross-examination than the man on trial for his life. The fact is, there is but one reason why this testimony is admissible, and that is that the witness being dead, it is impossible to procure his presence at the trial, and having given his testimony in the very presence of death, it is entitled to as much credit as if delivered under oath. This being true, what valid reason can there be for denying the admissibility of such testimony in all character of cases, whether civil or criminal? None can be given. If in cases where life itself is at stake, juries are permitted to consider this kind of testimony, then by far greater reason ought they be allowed to consider the same when mere property rights are at issue. The history of criminal trials abounds with cases where testimony of this character has sent men to the scaffold. Are dimes and dollars of so much greater importance than life itself that their ownership may not be determined upon testimony of this kind?

The Supreme Court of Kansas, in a recent well-considered case (91 Kans. 468), refused to longer follow this rule and held dying statements admissible even in civil cases. In the course of the opinion, the Court said: "We are confronted with a restricted rule of evidence commendable only for its age, its respectability resting solely upon a habit of judicial recognition, formed without reason and continued without justification."

The doctrine of *stare decisis* has no place in the law of evidence. It is confined solely to the field of substantive law. No man can have a property right in any rule of evidence. When the courts find they have fallen into error as to a rule of evidence, they should have the courage to say so and repudiate it. These rules of evidence are judge-made law and not the result of legislative action. The judges and courts, having enacted these erroneous rules, have the power and with it the duty to repeal and abrogate them. The creature cannot become greater than the creator. It will not do for the court to put the blame on the legislature. The legislature did not make these rules and is in no wise responsible for them. They are the children of the courts and it is the duty of the courts to chastise and correct them. Courts should not worship at the shrine of precedent for mere precedent's sake. Error should not be tolerated simply because of its long standing. The fact that an error is hoary with age and its hands red with the blood of many miscarriages of justice, is all the more reason why it should be stricken to earth, and its baneful, iniquitous influence broken and destroyed. It may be objected that such conduct on the part of the courts would be to legislate, to make laws and not construe and enforce them. But the great body of our law in force today, especially that of evidence, is judge-made law. The Courts have made this law and are making law every day. As an evidence that this statement is true, I point to another progressive and courageous step taken by the Springfield Court of Appeals. From the foundation of our State, the Supreme Court has repeatedly declared that no difference though the defendant were in fact arraigned; no difference though he had in fact pleaded not guilty; no difference though he had had a full and fair trial; no difference though he had been vouchsafed every guaranty of the Constitution and every right accorded to him under the Statute; no difference though the evidence showed him guilty not only beyond a reasonable doubt but beyond all cavil, still, if the clerk, in writing up the record, fail to recite the fact that the defendant had been arraigned and entered his plea of not guilty, the case must of necessity be reversed. The Springfield Court of Appeals took the bit in its mouth in a misdemeanor case and held that, if from all the record, it was evident that the defendant had had the benefit of all these rights and privileges just referred to, the case should not be reversed on that account. This ruling, of course, was not in accord with the uniform previous holdings of the Supreme Court. The case was therefore certified to the latter court and that court affirmed the decision of the Court of Appeals, thereby overruling, in effect, all its prior holdings on this question; because if such a holding is proper in a misdemeanor case, it would be the rankest rot to say it was not proper in a felony case, too. In rendering this decision the Springfield Court of Appeals, in defiance

of the former decisions of the Supreme Court, was making law and making a mighty good one, too; and the Supreme Court in affirming the case, was itself engaged in an act of legislation. Year after year, session after session, the judicial conference of this State has prepared bills and caused them to be introduced in the legislature, the effect of which was to do away with and make impossible the reversal of cases simply because the record failed to show the arraignment of the defendant. These bills were pigeon-holed and none of them ever got through the legislature. The appellate courts, by this one decision, accomplished what the legislature failed and refused to do for a whole decade.

The courts, that is, the courts of last resort, have the power to make and unmake rules of evidence. This responsibility they cannot shirk. If courts fail to measure up to the responsibility, other hands far less qualified will undertake the task. When citizens of this State appeal to the Courts to adjust their differences, they have a right to expect that their causes will be adjudicated with regard to the spirit and intelligence of the age, and not according to rules extracted from the sepulchre of buried civilizations, contaminated with the odor of the rotting bones and nostril-offending carcasses of theories long since exploded.

An enlightened people have a right to demand that the rules of evidence whereon depend the security of property and safety of life be written and declared not in the feeble rays of the flickering tapers of the distant past, but under the calcium light of the twentieth century; that such rules have foundation on the mountain-quarried stones of reason, common sense and logic, and not on the mildewed, decaying driftwood gathered from the boggy lowlands of dictum and dogma; that reason be completely enthroned in the temples of justice and commissioned to enter, unfettered and unshackled, upon the discharge of the high and holy duty of administering equal and exact justice to every man, without discrimination, without partiality.

(Applause).

THE PRESIDENT: I am sure that that paper furnishes you much food for thought.

THE PRESIDENT: It is now half past twelve o'clock. Can't we take up the further consideration of this report at 1:30? It is moved by Mr. Wammack, seconded by Mr. Jones, that we take up the further consideration of this report at 1:30.

Motion carried. Adjournment accordingly.

THURSDAY, SEPTEMBER 28TH, 1916, 1:30 P. M.

AFTERNOON SESSION.

THE PRESIDENT: Gentlemen, this is the hour set for continuing our consideration of this report, and we will proceed unless you think you desire to wait for other members. It might be well to wait a little bit.

JUDGE HARRIS: I suggest that we wait, Mr. President, because everybody interested in this thing wants as many people present as possible.

THE PRESIDENT: All right.

MR. J. C. JONES: Mr. Chairman, I have a motion that I wish to offer, and to which I think there will be no objection: "The President of this Association and the Presidents of the Kansas City Bar Association and the St. Louis Bar Association, together with such additional members of the Bar as the President of this Association shall designate, shall be and are hereby constituted a legislative committee to present and urge before the legislature the enactment into law of the report of the Special Committee on Legislation and Remedial Procedure as shall be approved by this Association."

JUDGE HARRIS: I second the motion.

MR. E. M. GROSSMAN: I think that ought to be amended to include such other matters as have been recommended by this Association.

THE PRESIDENT: There was a motion passed or adopted, to create a committee for just this kind of work, was there not—but the personnel of that committee was not named. I think there is no conflict, but this takes the place of the other.

MR. JONES: I think there is no conflict, but the purpose of this motion is to make the three Presidents named the official representatives of the Bar of this state.

THE PRESIDENT: He wants to know if you will have other matters referred to this Committee which have been recommended by the Association.

MR. JONES: I will add to the motion as I made it "and such other matters as shall have been endorsed and approved by this Association."

JUDGE HARRIS: I suggest to the consideration of the mover of this motion whether or not it would be well to include the Presidents of the Springfield Bar Association, if they have an organization, and perhaps the St. Joseph Association.

MR. JONES: I have no objection, but would welcome them. But if they are not represented here—

JUDGE W. L. STURDEVANT: Why not include the Presidents of other Associations?

MR. JONES: Then you have an unwieldy committee.

JUDGE STURDEVANT: There are not so many.

MR. JONES: I will adopt the suggestion, and include the Presidents of all established Bar Associations in the state, and the resolution to be re-framed to conform in phraseology, by the Secretary.

The motion was then put, and carried unanimously.

JUDGE STURDEVANT: I have a resolution to offer: (reading)

"Whereas, under the Act of 1915 the various Appellate Courts are directed to designate certain of their decisions for official publications; and whereas, the omission of some of the opinions from the official Missouri and Missouri Appellate Reports will render them less useful and will necessitate the lawyers supplementing with other systems of reports;

And whereas, it is desirable that the Official Reports should be complete and contain all of the decisions of the Appellate Courts of the State;

Be it resolved that the Missouri Bar Association respectfully requests the Supreme Court, The St. Louis Court of Appeals, The Kansas City Court of Appeals, and The

Springfield Court of Appeals to direct the publication of all of their written opinions in the official reports of the state."

I move the adoption of the resolution.

MR. M. O. HUDSON: I second the motion.

JUDGE HARRIS: I am heartily in favor of this motion. Those of us who have kept complete sets of the official reports find that our reports are practically valueless and we are compelled to buy sets of reports made by other concerns in order to have all the reports in our office. Furthermore, I think this is a good resolution for the reason that I believe that every opinion that is worthy of being written by an appellate court—that if any ought to be printed that all should be. I notice that among those designated not to be printed are those that seem to me important. Of course the appellate court does not think they are important or they would have them printed, but other lawyers have expressed themselves as surprised that they were not printed.

MR. M. O. HUDSON: I am heartily in favor of this resolution. I investigated the matter in the summer. In Nebraska, fifteen years ago they published certain opinions designated by the court, but within two years they went back and caught up those unpublished reports and printed them. The same thing is true of other states. The Missouri appeal reports are going to be worthless if they don't contain all of those opinions and it will simply necessitate our having some other system of reports that will contain the whole. I hope the resolution will carry.

MR. C. A. BARNES: I offer the suggestion that the printer in printing those opinions not designated by the court separate them from those which are, but put them all in the same volume. In that way we would have the mind of the appellate court and at the same time have all the opinions handed down, and in the same volume.

MR. E. L. ALFORD: I offer an amendment to the resolution just read, and that is that the Supreme Court be petitioned by this body not only to print all of the opinions of

that court and the courts of appeals but to provide, as they may see fit, for the printing of those decisions already omitted.

THE PRESIDENT: Mr. Barnes, did you offer a motion or a suggestion?

MR. BARNES: Well, I made it as a suggestion.

JUDGE STURDEVANT: What purpose would that serve, Mr. Barnes?

MR. BARNES: Well, the Supreme Court and appellate courts now have authority to designate such opinions as should be published. The opinions they don't designate are perhaps nevertheless official, but if they would divide them we would have a better idea of how long we ought to have those opinions published, and still have them all.

JUDGE STURDEVANT: If they are to be published at all, they ought all to be published, all alike.

MR. BARNES: Some courts don't publish but 33 1-3% of the opinions written. This is a mere request that we make to the court, through this resolution, at any rate, and it is only for the convenience of it. When this matter first came up the Stephens Publishing Company made some inquiry of the lawyers of Missouri as to the manner in which they wanted the opinions published; whether they wanted them published in separate volumes or in one volume. I think it is to the interest of the bar to have them all published, but with a notation by the Supreme Court as to which they wish published.

MR. JOHN I. WILLIAMSON: What good would that do?

MR. BARNES: The official volume would not contain those opinions.

BY SEVERAL: Sure, they ought to.

MR. WILLIAMSON: Question.

THE PRESIDENT: The original motion was that we request the various appeal courts of this state to publish all

opinions that they write. A motion was made to amend that by adding to it the provision that they shall include and have published those that have already been omitted up to this time Mr. Barnes suggests that they be printed separately. I am going to let you vote on Mr. Barnes' suggestion, whether it is a motion or not.

MR. BARNES: I don't mean to make a separate volume—

THE PRESIDENT: I understand your meaning, but I didn't state it properly. Glad to have you correct me. As many as favor Mr. Barnes' suggestion will say "aye". Contrary "no". The "noes" have it. All in favor of including the reports that have been already omitted will say "aye". Contrary, "no". The "ayes" have it. Those in favor of the original resolution, as amended, will say "aye". Contrary, "no". The "ayes" have it.

THE PRESIDENT: Now, gentlemen, we are a little behind with our schedule. This is an important matter and we will have time to debate this further and fully, and I want you gentlemen to express your judgment on it. At this time Professor Eldon R. James has a paper which should be read on the subject "The Changing Law," but, considerate and courteous as he always is, seeing the condition of our docket, he has suggested to me that it would be entirely agreeable to him to have this address simply printed with the rest of our proceedings and he will be glad to be relieved of the delivery of it in your hearing. With your consent, that will be the order in this case. Is there objection? The Chair hears none, and it is so ordered.

THE CHANGING LAW.

To our remote ancestors nothing could seem stranger than the idea of a changing law. Law to them was immutable, unchanging, revealed to men sometimes through a divine inspiration which enabled the judge to decide a case justly or at other times more immediately through the direct dictation of God or sometimes even more directly through a

divinely constructed code, written by the finger of Jehovah, Himself, and delivered to man amid the thunders of Sinai. No change could by any means take place in such a law. It was divinely perfect and being so, unchangeable as Deity itself. That this notion of an unchanging law has not left us completely we have only to observe that the modern judge according to the classic theory of the origin of law to which there is very considerable adherence, does not make law but only finds it. To those who use this form of expression, law, at least that part of it which has developed through and by a course of decisions by judges, is fixed and unchanging. It is not made but found. It does not grow but is discovered. It has been always in existence. To such as maintain the validity of this view, the law of the telephone, the telegraph, the flying machine, the law of combinations in restraint of trade, of the railroad, indeed, all the law of our complex industrial and social life existed, as it does today, in Henry II's time, somewhat as the exquisite dream of the sculptor lies implicit in the block of marble, waiting only for the deft hand to bring it forth into the light of day.

This notion of an unchanging law in its extreme form is, of course, not the generally accepted one today. We realize that law does change and indeed must change for law is a living force in the lives of men and like everything else which lives must grow and change as the needs of men in society change and develop. Law, being what it is, rules and principles for the regulation of the mutual relations and contacts of men to the end that there may be a peaceful ordering of society and a just balancing of opposed and conflicting interests, changes and assumes new forms as the political, social and economic interests of men develop and change. Indeed, it is as impossible for us to conceive of law as standing still as it is for us to conceive of a society without movement, without either progress or retrogression. A society, indeed, may seem to be static and changeless, but it nevertheless is changing though for a long time the change may be imperceptible. China lived for thousands of years apparently without movement, but there were forces at work during much of this time which in our day have made themselves manifest in revolution. These great forces which are continually and without cessation, bringing about changes in the structure and organization of society are at the same time operating upon law, causing it to change and assume new forms and constantly to adapt itself to new social and economic conditions.

One of the criticisms of law which is frequently heard is not that it does not change but that it does not change rapidly enough to meet the needs of a developing society. The law seems to lag behind the social procession. It is ultra conservative. It changes so slowly that it seems not to change at all.

There are reasons why, to a certain extent, law must lag behind, why it must march with a slower step than that of a developing social consciousness. It has been well said that "law is a force of occupation whose business it is to see that the flag of the conqueror is never lowered upon territory once annexed by social conviction." Law cannot precede but must follow the social conviction. It does not march with the advance guard but follows in the rear to secure and hold that which has been captured from the enemy. While law may be and is, in part, an expression of social conviction in the imperative mood, it must be observed that a very great deal of it does not represent any social conviction at all. Much, if indeed it is not to be said most of it, exists merely because it works fairly well as things go in this practical and matter of fact world of ours. Accordingly any one who proposes changes in it must show that his proposals will work better than the existing rule. In most cases this is somewhat difficult to do and the very natural tendency is to hold fast to that which does its work well or is believed to do so, rather than to take up with propositions about the working of which no one can be quite sure. Changes therefore come slowly.

Another obstacle in the way of a rapid change in the law is the not unnatural conservatism of a professional class, the lawyers, upon whom lies the chief burden of the law's formulation and administration. The lawyer likes certainty, and naturally enough, for he has clients to advise and courts to persuade. He does not like to conquer new lands, or to engage in new adventures either of social conviction or of anything else. He prefers to play safe, to let well enough alone, an attitude which may lead to stagnation, but which undoubtedly has some merit behind it. However, though they do believe in looking before leaping, in thinking before doing, the lawyers as a class feel the compulsion of advancing social ideals just as others do, and perhaps their conservatism provides merely the necessary and salutary brake upon what might otherwise be a dangerous racing machine of social reform. Of course this sort of thing can be carried too far, notwithstanding its great value upon occasions of threatened danger to the social fabric from new, untried and sometimes harebrained proposals for the amelioration of all social ills through legislation.

The greatest obstacles to rapid changes in the law are to be found in the nature of those organs—the legislatures and the courts—by which under any scheme of government, law, either consciously, or unconsciously, must be made. Legislatures, whose function it is consciously to make law in the form of statute, are composed of ordinary men, not fired with any great degree of social conviction, more or less open minded, but nevertheless biased to a degree by their own special interests, and hence not always easy to persuade. Unless they are persuaded to act no statutory

change in the law can result. They must be started from a position of rest. They must be put in motion, and if this is not done, the law continues as it was. The difficulties of procuring new legislation, however, do not begin with the legislature. The people who elect the legislators must themselves be convinced and persuaded. A body of public opinion must be built up so that the legislator may feel that what he does will meet with the approval, to a reasonable degree, of those who have elected him. In a representative democracy, such as ours, the procurement of legislation is no light task. If we prefer a democratic government to an autocratic one, in which the ruler alone legislates, we must be prepared to pay the price and part of the price we pay is the delay in legislation. To criticize the law because of the inability to obtain easily and quickly desired changes in legislation, is to miss the real point. What should in most cases be the target of such criticism is not the law but the form of government under which we live. A government by discussion, as ours is, moves slowly. We believe in it, but we must recognize some of its inadequacies.

Aside from these difficulties which seem inherent there are some avoidable obstacles which prevent legislative changes from coming about as rapidly as they might. Delays in legislation are frequently caused by inability to get adequate information. Nothing can be learned of the conditions to be affected by the legislative proposals. The conscientious legislator is balked at nearly every turn by an impossibility almost of ever finding out just what are the facts with reference to the matter about which he is asked to legislate. This difficulty has been recognized and met in some states which have established legislative reference libraries where may be found everything that is known about the questions under discussion. It is to be hoped that the legislative reference library has come to stay, and that those states which do not have them, will provide for them without delay. Again, one of the difficulties met with in procuring legislation is the practical impossibility of having legislation adequately drafted. The drafting of a statute is not an easy task. It takes great knowledge and great skill, neither of which the ordinary legislator has. In England, they have had expert parliamentary draftsmen for years, men like Lord Thring and Sir Courtenay Ilbert, who could work as well for Mr. Disraeli as for Mr. Gladstone, and when the wide differences between the personalities and the policies of these two men are considered, it would seem that little more need be said as to the success of the English scheme for obtaining impartial expert assistance in the preparation of statutes. In Wisconsin and perhaps in other states as well, the legislative reference library has a department for the drafting of statutes, and thus is secured expert assistance in the very necessary work of proper formulation of legislative enactments. When we consider that today the growing point of our law is legislation and

that on an average over ten thousand statutes a year are passed by our national and state legislatures, the importance of the legislative reference library and of expert draftsmanship in doing away with preventable delays in legislation cannot be over-estimated.

Along with its growth by legislation, the law grows and changes through the decisions of courts, a slow method but a sure one. Cases can not be decided except when they arise and are presented to courts for decision and a change in the law through judicial decision can not take place except slowly because cases are not likely to arise just when the demands for change is most insistent, and whether they do or not is largely a matter of happen-so. Hence, in order to secure a reasonable amount of speed in changing the law, we are more and more turning to the legislatures which are not bound by the necessity of considering only those questions which are submitted to them by litigants, but can range freely and at will within constitutional limitations over the whole field of law. But the courts have by no means lost their importance as a means by which law may be changed. Day by day, courts of the United States and in all the states, are busy handing down decisions modifying, expanding, restricting or overruling the law in former cases, developing a common law adapted to modern conditions. They are hampered somewhat in this work by a defective and obsolete organization, as to which lawyers, and the public at large as well, are not thinking about as much as they should. An organization devised for the days of the stage coach is made to serve for these days of the railroad, the automobile and the flying machine. It was effective enough when the country was largely rural, when social and economic organization was simpler and less complex, but is totally inadequate for present day purposes. The multiplicity of separate and distinct courts such as we have gives rise too frequently to mere questions of jurisdiction in the consideration of which it sometimes happens that the substantial rights of the parties are lost sight of and there is thus brought about what cannot be regarded otherwise than as a denial of justice to the litigant. The impossibility of securing effective administrative control over such a multiplicity of courts, makes possible many of those delays of justice which have brought the law into disrepute. We may and do need more judges but we certainly need fewer courts. In this respect whatever of criticism there should be, would seem rather to be directed against the legislatures and the lawyers than against the courts, for the reorganization can come about only by the action of the people and by the legislatures, both of whom must be led by the enlightened sentiment of the bar.

Another matter which sometimes brings criticism upon the courts and for which they are not to blame, is the fact that only to a very limited extent have they control over matters of practice and procedure. The legislatures have to a great extent imposed an inflexible and un-

yielding system of practice upon the courts, when there should be a system of procedure and practice of great flexibility, capable of control by the courts themselves. Courts in most of the states have also been deprived of some of their necessary functions, functions which if not exercised will and do lead to confusion, delay and not infrequently to miscarriages of justice. The judge who should have control over the conduct of the trial has been largely deprived of his power to assist juries in reaching proper conclusions. He must refrain from any comment on the evidence, no matter how helpful and illuminating it might be, and the method of trial in the system from which our law has come, the Common Law, has been changed from trial by court and jury into a trial by counsel and jury, with the court looking on almost as a mere spectator and with only a little more power than has the moderator of a religious assembly. At the same time, the trial judge is subjected to a severe and rigid examination as to his knowledge of law, and must satisfy a supreme court which has a very keen eye for mistakes. Legislatures and the people should give judges more power instead of less, and should enable them not only to control procedure in matters coming before them but also to exercise a help supervision over the trial itself. They should be given a wider discretion as to the admissibility of evidence and supreme courts should not be so astute in the searching out of error as they sometimes now are.

There is one criticism of the courts, which may or may not be valid, but for which they themselves are clearly responsible. It is claimed they rely too much upon precedent and show a dependence upon previous decisions which at times is almost slavish. Under our system of administering law the court in reaching a decision must have in mind not only the attainment of a just result in the particular case, but also the realization that its decision may be made the basis of a rule to be followed in other cases. Conceivably the court might have before it only the single question of doing justice in the particular case, but as our system of law, differing in this respect from others, is based upon precedent, courts must realize and take into consideration the possibility of so deciding the particular case that the decision may fit into and harmonize with a line of decisions so as to form with them a consistent whole, or itself become the basis for a new rule, to be followed in the future. Any other conclusion would lead to great uncertainty in the law, and even administrative commissions of which we have so many today are publishing their decisions in particular cases and hence are forming a body of precedent, which more and more, as time goes on, and as similar situations arise, will force them, simply for the sake of preserving a continuity of policy, to adhere more or less to previous decisions. Lower courts are bound by the decision of courts of last resort in the same jurisdiction and therefore have no liberty of departing

therefrom, but courts of last resort in this country, at least, are not bound by their own decisions and we ought to expect, though too seldom are our expectations realized, that they will overthrow bad precedents and substitute good ones. That there is too great a tendency among courts of last resort to follow precedents, merely because it is precedent, can not be denied, and this tendency has undoubtedly produced a great deal of the legislation which flows so unceasingly from our national and state legislatures. It has led to the establishment of administrative commissions which, however, represent a reaction against an inflexible and highly technical procedure as well as a revolt against a servile use of precedents. There must be some adjustment between the frequently conflicting considerations of a just result in the particular case and the desirability of having certainty in the law, but the difficulties of the problem are great. The absolute and complete disregard for precedent is perhaps impossible as well as undesirable. Even in every day affairs we regard established usage very highly and we must not complain if the courts in this respect act as we do ourselves. Precedents are not completely disregarded even in the law of Continental Europe, as the numerous volumes of European law reports witness. If they are not used, why are they published? All that we can ask, therefore, from the courts at the present time is that they lend a sympathetic ear to criticisms of existing rules and come to a realization that *stare decisis* is not an immutable principle from which no departure can be made.

Notwithstanding the obstacles which have just been pointed out, through legislation or through the action of the courts, the law has changed and is changing to meet developing social demands and to conform to newly realized social ends. In the early days changes came with almost infinite slowness. Legislation was intermittent and sporadic. Much of it consisted merely in a formal and authoritative statement of existing custom and the law grew and changed largely through the decisions of judges and of courts. Starting as the law did in the beginning with the fundamental conception of the unity of religion and of law, to man in early society it was inconceivable that law could really change, but change and grow it did notwithstanding, but in devious and disguised ways, by fictions or by casuistic interpretations of provisions in such codes of customary law as then existed, which made it appear that no change had taken place. A famous example of this sort of thing may be given. In early society, the family was largely a religious institution built up around the worship of ancestors. Only those of the blood of such ancestors could effectively perform the family sacrifices or participate in the family worship. Inheritance was regulated upon the principle that those alone who could perform or take part in the family worship could inherit or share in the family property. None but the descendants of males could worship or inherit and as the women passed out of

their father's family upon marriage and their descendants accordingly belonged to another family, kinsmen in the female line no matter how closely related by blood could not participate in the inheritance. If there were no male descendants the possibility of worshipping the family ancestors ceased and these ancestors suffered in the nether world in consequence. Hence came into existence the custom of adoption by which some male not a member of the family became to all intents and purposes a blood descendant of the family ancestors, capable of performing the family sacrifices and of receiving the family inheritance. The ceremony of adoption was quite frequently, if not invariably, a simulation of birth, and the adopted child was by a fiction regarded as a natural child. The use of the fiction really changed the law. By it the family property could pass into the hands of a stranger in blood, but it did not appear that the law had changed. Indeed it was not realized then that the law could be changed. You might get around it in some way that would fool the gods, but a change in the law itself was impossible and inconceivable.

We must never forget, in considering the body of our law, that our own legal system is comparatively young. Though for nearly all practical purposes that part of our law before the 16th century may be disregarded, the marks of an earlier period, of earlier notions, of primitive ideas, are evident upon it. We have only just passed through the age of fictions, if indeed they have yet been left completely behind us. The language of fiction still lingers, though we are more and more coming to see that fictions themselves are useless and confusing. Our procedure was formerly full of them. Two of the three great courts of common law in England secured practically their whole jurisdiction in ordinary civil cases through the use of fictions. We must not forget also that it has only been within a comparatively short time since our law and our procedure were full of archaic formalisms. A few centuries ago, the ordinary contract based on promises was unknown to the law. A contractual obligation could be created only by a deed, a formal instrument under seal. Rational methods of trial were neither used nor desired by our ancestors of the 13th century. Trial by battle and the wager of law, they regarded as sufficient for their purposes. Even when the jury arose, it was itself a body of witnesses and not a tribunal of judges, as it is today. A cumbersome procedure restricted a litigant to certain formal categories of actions. If he could not bring his particular case within some one of the established and recognized categories he had no remedy. If he made a mistake in selecting his writ, he lost his case regardless of the consideration that essential justice might be on his side. Rigid formalism held the law in its grasp and so far as procedure is concerned, this grasp was not completely broken in England until 1873. In this country the adoption of an improved and modern procedure in New York

in 1848 marks an epoch, but notwithstanding this all formal and arbitrary elements have not yet been banished from American law.

The progress of the law from formal rigidity to the flexibility demanded by modern conceptions has been slow, very slow, but we must remember always that the bulk of mankind is ultra-conservative, extremely resistant to change. It is difficult to get men to take up new ideas and embody them into law, either because they cannot be interested sufficiently in them or because they think they really prefer what they have been accustomed to.

The idea that law can be made consciously and deliberately grew up rather late in legal history. It took a long time for us to outgrow the notion of an unchangeable law, which could grow only by fiction and subterfuge, but, notwithstanding the contention of extremists of the historical school of jurists like von Savigny in Germany and Carter in our own country to the effect that law cannot be made, we have come to believe that we can make it and for better or for worse we are doing it.

A mere glance at what has been accomplished within a brief space of years will show that law is changing as the conception of social desires and demands is changing, not so rapidly perhaps, but changing nevertheless, with a speed that would have left lawyers of older generations breathless, even though it does not quite satisfy the insistence of a newer and more rapid generation. Under the influence of a newer social philosophy, the criminal law itself, almost the last bulwark of traditionalism, is being moulded into new forms and with juvenile courts, and with a parole system for both adult and juvenile offenders, some of the outworn results of our older criminal law are being cast off. But much remains to be done. A new science of penology has arisen and its conclusions, even those which are generally recognized as valid, have only to a very slight extent been taken up into the law.

The changes in the law concerning the relations between employer and employee have been of the greatest importance. Labor legislation is nothing new in the history of Anglo-American law. English parliaments have from early times legislated upon the subject of labor, sometimes in a very repressive fashion, but some of this early legislation bears many resemblances to some projects which have been made the subject of present day discussion and action: for example, the regulation of wages was attempted in England as early as 1349, but the object sought was not the establishment of a minimum wage, which is the case with some of the modern legislation, but the fixing of a maximum beyond which it was unlawful for laborers to demand more.

In 1837 it was announced in England for the first time that an employer was not liable for the damage caused to one employee by a fellow employee, even though the latter might be acting within the scope of his employment. This doctrine was independently announced in this coun-

try in 1841 and after its acceptance by the great Chief Justice Shaw in Massachusetts in 1842 rapidly spread throughout the country. But it was not long before both courts and legislatures began to show dissatisfaction with it and its modification and restriction both by judicial decision and statute proceeded rapidly. It was felt that it was socially undesirable that in such cases an employer should escape all responsibility for injuries caused to his employees through the carelessness of other employees. In every state accordingly the early doctrines have been repudiated to a very large extent and now ninety per cent of the railroad employees of the country are subject to a Federal Employers Liability Act and a Federal Safety Appliances Act which have modified and changed very greatly what had been originally held to be the law upon the subject. Another doctrine of the law which has been changed to meet modern conceptions of the relation between employer and employee is that which held that an employee could not recover damages for an injury suffered by him in the course of his employment if he had voluntarily subjected himself to danger, or if he was guilty himself of negligence or lack of care contributing to his injury. If a machine breaks down, the employer repairs it and looks to his customers to reimburse him for his expense, by charging them an increased price for his product. Why should injuries to employees be regarded differently? Why should the damage caused to an employee be charged to him individually and not to the business, simply because he has engaged in the doing of something which he knew was dangerous, but which he had to do in the course of his employment, perhaps at the risk of losing his job if he refused? Ideas such as these have brought about the enactment of Workmen's Compensation Acts, which have abolished the doctrine of assumption of risk and modified that of contributory negligence and have put upon the employer, or upon a fund to which he is required to contribute, the burden of almost all injuries to workmen. These acts have come into American law to stay and we may confidently expect their adoption in some form or other in all of the states.

It has long been felt that the employer should not have the right to subject his employee to danger from unsafe machinery, from an unsafe building in which to work, from unsanitary and unhealthful surroundings. Accordingly, factory conditions have provided a fertile field for legislative activity and everywhere there is at least a minimum provision for the health, safety and comfort of employees. In many states, terms of employment, which under the older doctrines, employer and employee were left to settle for themselves, are now regulated by the state. Wages in many places must be paid in money and not in orders upon a company store. Membership in labor organizations may not be forbidden by employers. Hours of labor are regulated, usually for women and children alone, but attempts have been made in certain businesses and

employments the conditions of which would seem to make continued labor for long periods undesirable, to regulate the hours of labor for men.

Sir Henry Maine summed up his interpretation of legal history in the phrase "from Status to Contract." He saw in the law a steady movement from conditions of slavery in which there was a complete incapacity to enter into transactions deriving their validity from the law to a condition of complete freedom to all individuals to enter into and take part in all political and legal transactions. If Maine's interpretation is correct, we seem to be traveling backwards, for the tendency today is to put disabilities upon employers and employees, as well as upon others, such as common carriers and the like, which are not imposed upon the rest of the community. But assuming the soundness of Maine's interpretation of legal history, though it seems to be open to some question, disabilities were imposed in the earlier periods of legal history with a very different end in view than has the legislation just mentioned and such legislation is perhaps not so much reversing the course of history as it is creating or attempting to create conditions which tend to promote an actual realization of that liberty and freedom which he represents as the goal of our law.

To glance further at the changes which are taking place in the law, we must notice the attempts made to protect the public health and safety, through the prohibition of the sale of adulterated and impure foods, or of foods such as milk and of drugs which do not conform to established standards. The enforcement of this legislation is generally left to boards and officers having wide discretionary powers. They may cut off access to dwellings, condemn and destroy food, prohibit the carrying on of offensive trades, protect the purity of the water supply, condemn unsanitary buildings and in general exercise the widest and most unquestioned authority for the protection of the health and safety of the community.

Callings and professions are regulated to the end that the public may be served adequately and skillfully. Examinations in many states are required for admission to the practice of the law, medicine, pharmacy, dentistry and veterinary surgery. Barbers, plumbers and stationary engineers must have certain qualifications before they can enter upon their trades. Businesses which are regarded as public callings or employments are regulated for the protection and service of the public, railroads, hotels, warehouses, express companies, gas and electric companies, banks and insurance companies. The public is protected against fraud and imposition by legislation providing for standard weights and measures. False and misleading advertisements are made unlawful and the issuing of fraudulent securities is attempted to be prevented by what is sometimes called "blue sky" legislation.

I have not attempted in what has been said to indicate all of the changes which have taken place in the law generally or even in the law of any one state due to the absorption of a developing social ideal, but simply to indicate a tendency. Some of this legislation will be found in every state but much of it is found only here and there throughout the United States. The fact that we are a union of sovereign states and that the Federal Government is limited by the Constitution prevents in this country anything like absolute uniformity in the growth and development of law. Each state within certain limits is a law unto itself. Such a condition of affairs is not without disadvantages and as there seems to be no reason why legislation upon commercial subjects, at least, should not be uniform, a national commission on uniform state laws has been at work for many years, drafting statutes and recommending their adoption. Some of these, particularly the Negotiable Instruments Act, have been adopted in many states. No great attempt has yet been made by this commission to extend its activities much beyond the drafting of codifications of part of the commercial law, but there is just as much reason for approximating uniformity in some other fields of legislation, particularly that which for want of a better term may be called social legislation. But uniformity in this is still a long ways off.

We must not be misled into thinking that the work of bringing the law into line with modern ideals is done. Much remains to be done in every state and much of that which has been done has been found unworkable or inadequate and will have to be replaced, but a large part of it is sound and will stand until new conditions and new ideals compel its retirement to the rubbish heap of outwork things. The task of bringing the law into line with a developing social consciousness will never be completely achieved for a body of legislation made in the present never can satisfy the demands even of the time in which it is made, much less those of the unforeseeable future. But the significant thing is that law is not fossilized, that it is not a dead body, but a living institution, which has in the past changed and is now changing to meet the demands which may justly be put upon it, discarding that which is obsolete and outworn, retaining that of the past which still has living force, and adding to itself those new ideas of the present, when their essential validity has been established.

When we think of the dominance of *laissez faire* in the law of the first half of the nineteenth century, when we think of the individualistic natural rights philosophy which dominated our law for much longer, we can get some idea of the distance we have traveled in what, for social development, is a comparatively short space of time. To the American legislator of the present day law, at least so far as law consists of legislation, is a means to a social end. He puts restrictions upon the ownership of property, provides for its seizure and destruction, denies to those

not qualified the exercise of professions and callings, limits the freedom of contract, interferes in multitudes of ways with the management of private businesses, all in supreme disregard of natural rights, whenever he conceives that social demands require it. He ventures even to lay his impious hands upon the common law itself, the very ark of the covenant to an older generation, and changes it and makes it over to promote what he believes to be the course of social and economic progress. Something of what he has attempted to do has failed of its purpose. Many of his projects are unsound from every viewpoint, but the conception that law must change to meet changing social development and expanding social ideals and that legislation may be made a powerful agency in the promotion of social and economic progress has been thoroughly grasped and the development of the law through legislation, to meet the social and industrial problems of the present will continue. There are inherent limitations upon the power of the legislature growing out of the nature of law itself, growing out of the function of legislation, growing out also of the function of the judiciary, which will frustrate many attempts to embody in law all the schemes of social reformers, but well within those limits there is an immense field for sound and constructive legislation as well as for sound and constructive judicial action, which will be taken possession of, sooner or later, whenever it is demanded by a sufficiently developed public opinion by which in the end both the legislator and the judge is always controlled and guided.

It may be asked, where is this flood of legislation taking us? What is its goal, its purpose? There is nothing more difficult to do than to interpret a course of human action, and this is particularly true as to the interpretation of the modern movement in legislation. He is a brave man who would venture to be dogmatic about it, but it seems to be possible to see, though dimly, a purpose back of the social legislation of the past half century. Legislation does not proceed upon any *a priori* theory of social amelioration. The legislator is an opportunist and an experimenter. He is engaged in the task of trying things out to endeavor to meet some immediate object, some pressing need and his mind is not directed upon the distant future but only to the immediate present. But what he seems to be doing is this: He has realized that man does not exist for law, but law for man, and that law should adapt itself to the needs of men as these needs become apparent. As a man must live in companionship with his fellows, the law should give him a chance to make the most out of himself in the society in which he lives. If he is exploited by his employer, if he is surrounded by unhealthy conditions, if he is put to work in unnecessarily dangerous places, if he is unduly subjected to the danger of fraud and imposition, if he cannot be served adequately and fairly in the professions and callings, where special skill is required, he cannot to the fullest extent achieve for himself his great-

est usefulness in society or the greatest happiness for himself. This equalization of opportunity cannot be brought about without each one of us giving up something for the common good. We must abandon some of our insistence upon our own individual interests and demands in order that social demands and interests may be realized for the general good of all. The law as an institution exists for the purpose of working out a just balancing of individual interests, the interests of men in particular, with social interests, the interests of men in general, and by means of rules and principles for the guidance and regulation of conduct, attempts to bring about a peaceful ordering of society to the end that each individual in that society may have an equal opportunity with others to make the best out of himself and to contribute this best to the advancement of the general good. We can see without difficulty that this ideal has not yet been completely achieved. The balancing of individual demands with social demands and with other individual demands, so as to promote the general order by the equalization of opportunity and to provide for the greatest possible self-realization consistent with the common good; at once to satisfy and to reconcile the justifiable claims of the individual and of society as well is no light task. There is nothing more difficult in the whole compass of human activity. At one time one set of interests, one group of demands will be powerful enough to warp the law towards their exclusive protection, regardless of other and opposing claims. At other times another and perhaps opposing set of interests will pull the law in another direction, but the results of the development of the law of the past fifty years would seem to indicate that in spite of eddies in the stream, the current of the law is towards the fuller realization of the ideal. If we could arise above the past that is in us and of us, if we could disregard the ancient, the formal and the obsolete, if we could see the past, present and the future with clear and unclouded vision, if we had infinite wisdom, if we were gods and not men we could make a perfect law. But as it is we have to do the best we can with our powers as they are, and all we ask of the law, or of any other institution of our own making, is not that it be perfect, that would be to ask for the impossible, but that it show a flexibility, an adaptability, a power to change, so as to meet new conditions, to take up new ideas, to respond to those changing influences and ideals to which men are subject. We must not ask too much of the law. We will be disappointed if we do. But if we moderate our demands to the reasonable, the attainable, I believe that we must admit that our law and our legal system, notwithstanding their defects, still have the power to respond to the needs of men, to grow and to change, and so long as they retain these powers they will live for our service in the future as they have in the past.

ELDON R. JAMES.

THE PRESIDENT: The next feature of our programme is an address on "Commercial Arbitration". Of course we recognize that the question of arbitration is one of our important questions. The gentleman who will speak on that is the Honorable Herbert Harley, of Chicago, who has made special study along this line.

MR. HARLEY: I feel that I ought not to take up your time more than I need to to present this subject, and in extenuation I may say that I will skip occasional parts of this—about 25% of it I will not read, but it will come forward in the record.

COMMERCIAL ARBITRATION.

The most convenient way to learn the nature and utility of commercial arbitration and its relation to practical jurisprudence is to observe it in the jurisdiction in which it has made its greatest progress. This leads the investigator to England. Having made no first hand study of the subject I am indebted for the facts presented to a report made for the American Judicature Society by Mr. Samuel Rosenbaum of Philadelphia, one of its draftsmen in the field of civil procedure. Mr. Rosenbaum devoted five months to the study of arbitration in England in the early part of the year 1914.

One of the most striking facts concerning British litigation and one commonly overlooked by writers, is the almost total absence of commercial disputes from the calendars of the principal trial court. This is only in part explained by the fact that improved methods of procedure, by eliminating all unnecessary trials, effect a disposal of ninety-seven per cent of the court's large volume of business without trial.

The practice of commercial arbitration which has developed in England in the past forty years saves the courts a tremendous amount of business. Figures are not obtainable but certainly more than 100,000 causes are arbitrated every year.

Arbitration must not be confused with conciliation or mediation, with compromise or adjustment by mutual concessions. "It is a regular and recognized method sanctioned and governed by law, for the determination of rights and the enforcement of remedies, by which a party aggrieved may ascertain and obtain all that he is entitled to from his opponent, without instituting an action in the courts of law."

Practically every trade agreement made in England or covering the purchase or shipment of goods to be delivered in England, contains an

agreement to submit disputes to arbitration. One cannot build or rent a house, ship goods by rail or water, or buy or sell in quantity without signing a contract which contains such a clause.

Arbitration has been practiced in England from the times of the Saxons. In 1697 a statute was enacted to further its purposes; in 1837 and again in 1854 there were additional acts. The extended modern use of arbitration may be said to date from the American Civil war, which produced so many disputes in the cotton trade that the Liverpool Cotton Association set up an arbitration committee and members inserted in all their contracts a clause requiring disputes to be submitted to the Arbitration Committee of their Association.

The success of the plan strengthened the position of the Association in the trade, and that, in turn, increased the power of the Arbitration Committee so that practically every difference that arose in the Liverpool cotton market between buyers and sellers, whether English or foreign, came to the Arbitration Committee for settlement. Although the parties had a strict legal right to revoke their submission, the disciplinary powers of the Association were sufficient to make parties feel they were better advised to submit if they wished to continue doing business in that market.

Other trades were quick to see the advantage of this system of organized arbitration. The Liverpool Corn Trade Association soon established a similar committee, and then the General Brokers' Association followed suit. The London markets next took it up; the associations existing in the Corn Trade, the Oil Seed Trade, the Cotton Trade, the Coffee Trade, and others, set up their own arbitration committees, and, year by year, other associations either adopted the plan or came into existence with trade arbitration as one of their avowed objects. The various exchanges all molded their committees on similar lines—the Stock Exchange, the Coal Exchange, the Produce Exchange, and others. Then professional bodies began to see the advantage of providing a medium for settling disputes at home instead of by strangers, and the Architects, the Engineers, the Estate Agents, the Auctioneers and other such groups established domestic tribunals.

In 1889, after a dozen years of agitation, an Act was passed consolidating and revising the law of arbitration and providing in a schedule a simple set of rules to govern the procedure in all arbitrations where no agreement to the contrary was made by the parties. The need for such a simplification in the law is eloquent of the extent to which the principle of arbitration had spread through the English business world. A letter in the London Times in 1883 (probably from Lord Bramwell) said: "It is strange that those who call for changes in the procedure of our courts rarely allude to arbitration. Yet what would be their condition but for the fact that whole trades and professions have vir-



HERBERT HARLEY
Chicago, Ill.

tually turned their backs upon them and uniformly settle their disputes by arbitration?"

Today there is not a trade or professional organization in England that does not provide some means for the arbitration of disputes that arise among members or between members and others, and frequently between non-members engaged in similar work. It is not surprising, therefore, that by this means a great volume of litigation is avoided and commercial disputes kept out of court.

The opportunity to benefit by arbitration has been one of the factors leading to the organization of almost every existing line of trade. One of the purposes of organization is to remove sources of friction between buyer and seller and this is accomplished in great measure through the use of uniform drafts of contract, embodying the collective experience of the trade. In every such contract there is a clause by which the parties agree to submit disputes to arbitration.

The Corn Exchange employs this simple clause:

"Goods sold ex ship to arrive to be taken without refusal, but any dispute arising out of this contract to be settled by arbitration in the usual manner, as per rules of the London Corn Trade Association."

The Corn Trade Association has a complete and efficient code of arbitration rules which are thereby incorporated in the contract.

The contract form of the London Oil and Tallow Trades' Association contains this clause:

"Any dispute on this contract to be settled by arbitration in London as soon as it may arise, in accordance with the rules endorsed upon this contract."

And the rules are found on the back of the instrument.

In every trade there has been developed a body of experts available as arbitrators, men who have mastered the mysteries and intricacies of their respective trades. They may be active or retired business men. There are in the main two types of arbitration tribunals. One is composed of arbitrators chosen by or for the parties for the purpose solely of a particular dispute. The other consists of arbitrators appointed to serve for certain associations for a fixed period of months or years although their relation to any single arbitration is identical to that of arbitrators chosen *ad hoc*.

ENFORCEABILITY.

At common law an agreement to arbitrate, or a submission as it is called, was no different in legal effect than any other agreement. A party to it could at any time revoke the arbitrator's authority, in which case the arbitration was abortive; or a party could, in spite of his agreement to arbitrate, begin a lawsuit upon the same subject-matter and so render the submission useless. In either case the only remedy for the

party aggrieved was an action for damages caused by the breach of agreement. The Courts would not enforce the agreement itself, because of a theory that it was in derogation of the powers of the courts and therefore unholy. In the early days judges, as well as other court officers, were paid by fees on the volume of business that came to them and being only human they looked with disfavor upon any limitations on their powers. It is easy to appreciate the psychology of the legal maxim: "The office of a good judge is to extend his jurisdiction." And speaking of the suspicion with which courts of law regarded arbitrations, Lord Campbell observed: "It probably originated in the contests of the different courts in ancient times for extent of jurisdiction, all of them being opposed to anything that would altogether deprive any one of them of jurisdiction." Judges no longer have the same interest to serve, but like some other doctrines in the law, this one survived the conditions out of which it arose, and we hear it solemnly proclaimed in American Courts today that any agreement to "oust the jurisdiction of the courts" such as a submission to arbitration is "against public policy."

In England the inherited antipathy of courts to arbitration has been cured by a course of legislation which, though extending over a period of nearly two centuries, is now gathered and codified in the Arbitration Act, 1889. The two outstanding features of that law are that a submission to arbitration cannot be revoked, and that an award of the arbitrators may be enforced like a judgment of the courts. The opening section of the Act reads:

"A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect as if it had been made an order of court."

The effect of this is that a person who has agreed to arbitrate is bound to arbitrate and to accept the award of the arbitrators appointed, and cannot revoke their appointment unless he is relieved by the court. Leave to revoke the authority of an arbitrator will, however, be granted for good cause; the principal grounds on which an application for that purpose is made are interest, bias, or misconduct, on the part of the arbitrator, such as to prevent his giving a fair decision.

There are two methods provided in the Act for practically carrying out the enforcement of an agreement to arbitrate. The first is the right given either party to block any action begun in court by the other upon the same subject-matter, by a motion to stay the proceedings. Section 4 of the Act is as follows:

"If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance and before deliver-

ing any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings."

Armed with this weapon, the defendant in the legal proceedings can force his opponent to resort to arbitration for his remedy and not to the courts. Conversely, the party demanding relief may find difficulty in bringing his opponent into an arbitration. For such a case, Sections 5 and 6 make the following provisions:

"Sec. 5. In any of the following cases: (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator; * * *

(c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; * * *

Any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

"If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Sec. 6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—(a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent; provided that the court or a judge may set aside any appointment made in pursuance of this section."

By virtue of this the delinquent party may find himself subject to a judgment rendered without adequate presentation of his case and needless to say the presence of the two sections in the Act is itself sufficient explanation of the fact that their powers are seldom invoked.

These sections insure the holding of an arbitration and the rendering of an award whenever parties sign an agreement containing an arbitration clause similar to those quoted above. Their binding force is completed by the following section of the Act (Section 14):

"An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect."

This gives the remaining party the benefit of all the ordinary methods of execution of which he can avail himself without further legal proceedings.

Backed up by this powerful statute, an arbitration clause in a contract is not a thing to meddle with, for it is easier to enforce than almost any other part of the contract. But there is more than just the statutory influences to support the arbitration clause; even the escapes permitted by the statute are not sought except in cases of necessity and good faith. There is a general opinion in the business community against the breach of arbitration agreements, which is equally potent with the Act. In addition to that, there is the disciplinary power over their members, of all the associations and exchanges that provide some form of arbitration tribunal, which the members find it to their interest to conciliate. In short, a submission to arbitration in England, instead of being regarded askant as contrary to public policy, is favored both by law and opinion and clothed with an enforceability it never possessed at common law.

PROCEDURE.

Any dispute which may be the basis for a civil action, except a suit for divorce, may be arbitrated. In practice most of the disputes so submitted are those arising on questions of fact concerning the quality, condition or value of property at the time of delivery. In the ordinary course of business, disputes over facts are far commoner than disputes of law. Some other fields of controversy are whether the conduct of a party, not strictly in accordance with his contract, is nevertheless a reasonable compliance therewith; whether there have been unreasonable delays in fulfilling a contract, and if so what injury has been caused thereby; whether certain services are worth the amount demanded for them, for instance in commissions; questions of the extent or division of business territory; questions of the value of goods or property, real or personal; these are all questions primarily of fact, which cannot always be decided by scrutinizing the terms of the contract. For their decision it seems almost self-evident that the ideal tribunal is one possessing first-hand knowledge of the values, facts, customs, technical terms and course of dealings prevailing in any particular line, if there can be found together with this knowledge the fairness and unprejudiced effort to give a square deal that a judicial tribunal should exercise.

Until the last quarter of the nineteenth century the only tribunal offered by the English law courts to satisfy this desire was a jury, chosen at random (except in the time of Lord Mansfield), and though

often rigidly fair-minded, yet usually hopelessly unable to form any but the vaguest conception of the technical facts involved. This condition has now been changed and trials are now possible in the courts before a judge alone or before an official referee. But these concessions were avowedly made in an effort to compete with the practice of arbitration, to which business men were driven in order to escape from the folly of jury trials in contract actions, a practice which they found so satisfactory that they continue in their wickedness today.

In most instances the parties select their own arbitrators without any restriction upon choice, or agree on a single arbitrator. When each party is represented, and the arbitrators do not agree, they choose an umpire, and in case of inability to agree upon an umpire, the association or the court will make the appointment. A party dissatisfied with the decision may appeal to the Committee of Appeal of the particular association under whose contract form he is arbitrating. In many associations the governing board selects from twenty to thirty members to serve on the Committee of Appeal, and this committee, usually by ballot, creates a Board of Appeal comprising four or five of its members for the particular appeal.

The appeal is then heard by the Board of Appeal and their decision is final on the facts. It is still open to the parties to have any points of law which arise stated to the High Court, from which an appeal lies to the Court of Appeal and to the House of Lords. The facts found by the arbitrators or the Board of Appeal of the Association have the same conclusiveness as if they had been found by a jury.

In certain associations a different procedure prevails. There may be a permanent Board of Appeals of twelve by whom all appeals are heard sitting in a body, though the attendance of all is not necessary. In associations covering a variety of allied trades it is the practice to have an Appeal Board of three persons, a broker, a dealer, and a merchant, all engaged in the particular line involved. In one association the president is limited to an approved list of about 200 members for his selection. The permanent Board of Appeal is favored because the older and more experienced men in the trade are selected for it, and experience gives them familiarity with the procedure and training in the use of judicial powers.

In a few associations the choice of arbitrators in the first instance is restricted. In the London Sugar Association the Council hears all arbitrations without a right to appeal. The Liverpool Cotton Association has 24 arbitrators who act in rotation. The parties do not know who will serve and the arbitrator sees only the cotton without knowing the parties concerned.

In most of the professional organizations the contracts provide that the president of the association shall appoint an arbitrator. The high

standing of the executive is sufficient guaranty of a wise exercise of power. Some organizations publish an approved list of arbitrators as a guide to intending parties. Such a list is published by the Timber Trade Federation, in whose list each name is followed by a specification of the woods in which the man is expert.

In most arbitrations the procedure is regulated by the Act of 1889. In a schedule to the Act is a set of rules which govern the procedure. Section 2 of the Act reads:

"A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under submission."

The first two of these rules relate to the number of arbitrators to act:

"1. If no other mode of reference is provided the reference shall be to a single arbitrator.

"2. If the reference is to two arbitrators, the arbitrators may appoint an umpire at any time within the period during which they have power to make an award."

The arbitrators need not be named in the original agreement to arbitrate, which may have been made before the dispute arose; this is covered by the following clause in Sec. 27 of the Act:

"Submission means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named or not."

The general feeling among experts in arbitration is that a sole arbitrator is far better than two or three; when each side appoints its own arbitrator, he is very apt to feel that he must advocate the side he represents, instead of acting impartially, and that leaves it to the umpire or third arbitrator after all to give the deciding vote. However, many persons seem to feel their interests are better safeguarded if they are represented in the discussion by their own arbitrator, so the practice is very general to provide in the submission for each side to appoint its own. If the two disagree, they have power and it is their duty, to appoint an umpire to settle the matter. If they cannot agree on an umpire the Court will, on application, name one, or, in a trade arbitration, the association will do so.

As to the manner of presenting the case, the provisions are very brief. The arbitrators have power to administer oaths or take affirmations of parties and witnesses appearing (Sec. 7 of the Act), but if they consider it proper they may hear witnesses without oath (Rule 7 of this Schedule). Parties are bound, subject to any legal objection, to produce before the arbitrators all books and documents which may be called for and to do all other things which the arbitrators may require (Rule 6 of

the Schedule), and parties may obtain the presence of witnesses with or without documents by subpoena, just as in a trial at law (Sec. 8 of the Act).

These general phrases clothe the arbitrators with authority to conduct the arbitration pretty much as they see fit, and there is no general uniformity. In each of the trade associations, certain customs have been established, however, which are more or less followed. For instance, in some lines it is customary for the parties to write out their entire case and leave the arbitrators to find an award upon the documents submitted, without holding any formal meeting or hearing; in other lines the converse is the rule—there are no written statements, but everything must be orally presented; in still others these two are combined—after a written statement from each side the arbitrators call for evidence upon the controversial points, either orally or in writing. Some associations permit the parties to be represented by counsel; others discourage such representation. It is very usual, however, in either event, for parties to be assisted by their solicitors in getting up their case. When hearings are necessary they can be arranged to suit the convenience of the parties; out-of-town witnesses can be heard at the most convenient time for them; and generally the matter is so arranged that the parties feel free to present their case in their own way and in their own time. The check on any abuse of this is the increase in the fees payable to the arbitrators for their time and services.

In arbitrations upon quality of materials, there are generally neither written statements nor formal hearings; the arbitrators (if there are more than one) meet and compare a sample portion to a standard lot of the same material, and render their award, giving or refusing an allowance on the price and fixing the amount, if any; in this they are guided solely by their knowledge of the material under discussion. This is the summary method followed in the thousands upon thousands of arbitrations which take place annually over consignments of wheat, rye, oats, oil-seed, timber, jute, hemp, sugar, coffee, ice, butter, meat, and innumerable other articles of commerce. Instead of lengthy correspondence, usually with persons oversea, or protracted litigation, these differences are settled in a few minutes or hours by experts who handle the actual material at the time of dispute, and not similar stuff or mere verbal descriptions some months or years later. These quality arbitrations in the trade associations are the most informal of any, as the object is to get the matter settled at once, as well as to get it settled at all. Business relations must go on, and they will go on more smoothly without outstanding differences. Arbitrations on other points are apt to be more formal, and they range all the way from a simple statement by each side, to all the formalities and complications of a lengthy trial, as in the big

arbitrations on building contracts or on insurance claims which are held before celebrated King's Counsel who, if not actually judges, are in line for appointment.

The award must be final, it must be certain and not ambiguous, it must be possible, reasonable, and consistent and it must not call for the doing of an illegal act. If it does not conform to these requirements the Court has power to remand the matters to the reconsideration of the arbitrators, or it has power, if there has been some misconduct of the proceedings before award, to set the matter aside completely. However, a court will not lightly disturb the award, but will sustain it whenever possible, on the ground that the parties have chosen their tribunal and ought to abide by its decision.

The Act gives arbitrators large powers with respect to costs and they are permitted to fix their own fees. The trade associations usually require that the award be written on an official form, thus enabling the losing party to have a certificate which can be passed back to the party from whom he bought the material in support of a claim for allowance. The loss may be passed through several successive hands until it reaches the person responsible for the defect.

There is no appeal from a final award in an arbitration. Many of the trade associations do, it is true, provide an appeal within the association, but that is merely a step toward finality—part of the proceeding—and at its conclusion the award is either upheld or altered and then is final. But while there is no appeal, strictly speaking, there is a method by which the opinion of the courts can be obtained upon certain points that come up in an arbitration. Any point of law that arises may be stated to the court for its decision. There are two ways in which this may be done: the arbitrator may do it in the course of the proceedings before him, or he may be ordered by the court to do so (under Sec. 19 of the Act), and then he must be guided in framing his award by the law applicable as defined by the court; or he may find all the facts and state his final award in the form of a case for the opinion of the court upon the question of law involved, or he may be ordered by the court to do so (under Sec. 7 of the Act). In the latter method he may, if he chooses, state his award in the alternative, depending upon the court's decision on the law; in any event, his part in the arbitration is completed when he states his award, and the court in framing its judgment will completely adjudicate the rights of the parties as based upon the facts found. From that judgment an appeal can be taken on up to the House of Lords. An opinion given under Sec. 19 is not a judgment, however, and therefore not appealable.

Appeals within the associations and applications to the courts on points of law are extremely few in proportion to the great number of

arbitrations. The fees imposed on appeals and cases stated are severe for the purpose of discouraging such action. For stating a case a fee of twenty-five guineas, or more, in the discretion of the Board of Appeal, is exacted, and from this a solicitor is paid for stating the case in proper legal form. The parties must then see to briefing counsel if they wish to have the point argued before the court.

A wide use of arbitration has also come about in recent years under proceedings specified in various new Acts. In some cases arbitration is optional, in some it is compulsory. Differences arising in the exercise of the power of public domain by public authorities and public utilities are invariably settled by arbitration, thus excluding from the courts a considerable volume of judicial business which in this country is dealt with in formal manner with judge and jury. Other statutes in the "compensation" group are the Housing of the Working Classes Acts, 1890-1909, the Housing, Town Planning, etc., Act, 1909, the Regulation of Railways Act, 1868, the Light Railways Act, 1896, the Metropolis Water Acts, 1872-1902, and there are many others.

A second group of statutes under which disputes are arbitrated contains recent Revenue Acts, introducing new schemes of taxation which give rise to many differences over the valuation of property. A third group includes new social legislation such as the Workmen's Compensation Act, 1906, under which all differences as to the amount of compensation payable to an injured workman or his dependents must be referred to arbitration. In these cases the county judge is usually selected as arbitrator but juries are unknown.

The trade associations do not account for all the arbitrations taking place in London. There are many lines of business in which arbitration clauses are habitually inserted in contracts not because of any association agreement or rule, but because of established custom and confirmed belief in the benefits of arbitration. A few of these lines of business are insurance, shipping, agriculture and building. An interesting instance of this class of cases is found in the arbitration of remuneration to be paid for salvage of vessels wrecked anywhere in the world, under the Committee of Lloyds. Contracts for salvage present a hundred chances for dispute and the difficulty of prosecuting litigation before remote tribunals makes arbitration especially useful, aside from the expertness of the arbitrators obtainable in London. In this connection Mr. Rosenbaum mentions his attendance upon an arbitration between a Norwegian shipowner and an American contractor upon the salving of a vessel wrecked in the Caribbean Sea, when a dispute involving \$30,000 was adjudicated

in one afternoon. In this business the Committee of Lloyds usually selects as arbitrator one of the half dozen or more of leading King's Counsel specializing in admiralty business. In insurance disputes and those arising in the building trade the practice is to appoint a leading barrister. A barrister who wins recognition as an authority in certain fields of commercial law is likely to have an assured income as arbitrator.

After considering all the lines of business in which contracts are standardized and more or less uniform, there is still a vast residue of business activities which consists of individual contracts made solely for the particular occasion. If these are written out, it is very rarely that an arbitration clause will not be found in them, and if they are not written out, it is the first instinct of the business man, if a dispute arises, to try and get a submission to arbitration from his opponent. The custom is firmly established, with the authority of common-sense and tradition behind it, and it extends down to the smallest dealings as well as up to those of stupendous magnitude.

An attempt extending over several decades to provide an arbitration tribunal for the general public by the London Chamber of Commerce has met with very little success. This is attributed in part to the competition from trade associations and in part to the fact that the rules do not permit the parties to select the arbitrator or arbitrators. So much hope for developing the practice in this country has been based upon the so-called Court of Arbitration fathered by the London Chamber of Commerce that it is important that the meager success of the institution and the reasons therefor should be understood, though the time at my disposal prevents more than a mere reference.

As to enforceability, the situation at present is that in England, under the Arbitration Act, a judgment may be entered on any award, whether that award is on an arbitration which took place in or out of England. Two parties might, therefore, enter on an arbitration in any country in the world, and the award could be taken to England and entered as a judgment, making property in England available for its satisfaction. The basis for this is that a submission to arbitration is a contract between the parties of which some of the terms are left to be supplied by the arbitrator, the submission and the award together constituting a complete contract which, by the Act, is given the effect of a voluntary confession of judgment. Few countries are as liberal in this regard as England, but English awards are, whether because of the local law or special treaty, enforceable in Germany, Denmark, Switzerland, Rumania, Brazil, Belgium, Sweden, Greece, Mexico and six of the self-governing British dependencies. It is

curious that in practically all these cases an English judgment would be valid only as the basis for a suit leading to a local judgment, and vice versa, whereas an award may be reciprocally entered up at once as a judgment without further suit.

The English demand for swift justice led in 1895 to the creation of a special list in the King's Bench Division of the High Court of Justice which is popularly known as the Commercial Court. To this branch a judge specially versed in commercial litigation was assigned and a procedure was established which rivals that of arbitration in informality. The list was started under the able management of Mr. Justice Mather "a judge intolerant of technicalities" who "swept away written pleadings and technicalities of every sort, coming straight to the point of every dispute and bringing the court into high favor with the London merchants who needed it." The court has provided an ideal procedure and has met with a fair measure of success, but has not drawn back to the courts the volume of business which it was expected to. Arbitration has increased steadily in volume and the business of the Commercial Court has actually declined in recent years.

ADVANTAGES OF ARBITRATION.

One of the conspicuous advantages of arbitration lies in the obliteration of all questions of jurisdiction. It is quite impossible to conceive of any development of judicial procedure proper which could permit regular courts to compete with arbitration in this respect.

The greatest single advantage possibly lies in the fact that decisions are made by men trained to a degree of expertness which cannot be realized in any other manner than through intimate connection with a narrow and technical branch of business. The questions best suited to arbitration are those mainly of fact, such as questions of quality, quantity, condition, value and trade customs, and it is obvious that a better approximation to the truth can be made by a specialist of his own knowledge than by a jury at second hand. Even a judge is inferior for this purpose, supposing the jury is dispensed with; he would often have to decide between conflicting testimony of experts before even selecting the standards with which to approach the decision of a specified question of commercial fact. Even the organized court which is able to assign a judge versed in commercial law and usages to a special branch is at a disadvantage compared with the more specialized and differentiated knowledge of business men who keep in touch, collectively, with a hundred or more lines of trade. The difficulties which we realize in admiralty and patent litigation, and other classes of causes in which much reliance

must be placed upon expert testimony, based largely on hypothetical questions, illustrate this disadvantage.

Another great advantage of arbitration over the law courts is in the matter of procedure. The procedure is flexible and can be adapted to the convenience of the parties and the character of the dispute heard. The meetings can be set for a fixed time and place, suitable to all parties, so that they do not have to sit in a court room watching a trial list drag on while their time and patience are exhausted; and the hearings can be held as soon as the parties are ready to go on, instead of after they have waited for weeks or months while a court disposes of an over-crowded docket. When the hearing begins, if it is to be lengthy, it can be arranged that the case is heard piecemeal—all the plaintiff's witnesses one day and all the defendant's another, or all the out-of-town witnesses as soon as they arrive, or any other satisfactory arrangement, which no court would permit. Next, in presenting evidence, the rules of evidence (which are a tribute to the contempt of the law for the intelligence of juries) present no obstacle, but the arbitrator is entirely free to use his judgment as to what is credible and what is not; parties are free to waive any technical rule which they do not consider it necessary to enforce, and are more willing to do so when they are gathered in an arbitration room than when they face each other across a court. The evidence, too, is apt to be fresher, as the hearing can take place while all the persons to be heard remember all the matters vividly, or while the goods or property are still in the condition complained of. This is especially important in seasonal trades, where there is a rush of business at certain months in the year and a lull at others; the disputes arising out of one season's business can be cleared off and settled before the minds of the parties are distracted by the next season's effort. Again, there is no opportunity for the many technical interlocutory applications and appeals which courts allow; parties feel they must present their whole case and get the dispute settled, as the award is final.

In the fourth place there must be considered the beneficial effect of the flourishing condition of arbitrations upon the English business community. This shows itself in several ways. The first is that it has been found that the presence of an arbitration clause in a contract is more potent in warding off disputes than it is even in settling those that arise; the parties know that any dispute arising will be settled quickly and efficiently, and that prevents either of them who might be inclined, from picking trouble with the other for the sake of delay; it is the common experience of both law courts and arbitration rooms that a speedy trial is the worst enemy of litiga-

tion, and usually the defendant, if he knows he will suffer judgment at once, will try to save the costs. But apart from this, the presence of the arbitration clause gives the parties the feeling that they are not enemies or dealing at arm's length; the very fact that they agree beforehand to settle differences in an amicable way paves the way to an understanding, even in case of a difference, which makes a formal arbitration unnecessary. On the other hand, there are bona fide differences founded on conviction or fact, which no amount of mere good feeling will settle; often a business man is obliged to swallow these because "going to law" is, as he has discovered, too slow, too expensive and too much of a gamble; the possibility of arbitration, however, gives him an opportunity to claim his rights in even a small matter, and the result is a healthier condition in which there is no cause for bearing grudges or for grumbling because of injustice for which there is no redress. Finally, if an arbitration does take place, there is apt to be much less of that irritation and bad feeling between the parties which a trial at law engenders, with its publicity, its artificial hostility between counsel, and its traditions of the medieval tournament. No better evidence could be adduced of the general attitude of settlement and co-operation created by arbitration than the quasi-negotiability of some awards in arbitration; each party in the chain of purchasers will honor the award and so it passes back to the original producer eliminating a lawsuit at each link of the chain.

The mutual and voluntary character of submissions to arbitration are in direct contrast to the compulsory nature of court litigation. In the law the rendering of exact justice in the matter at bar is a final aim. But in business the settlement of a given dispute is not ordinarily the most important thing. The big thing is the relationship between the parties. In its formal tribunals the law must ignore this preservation of relations between the parties, however momentous.

The voluntary character of arbitration affords a basis for successful continuance of business relations. Arbitration is thus seen as a constructive social function weaving into the fabric of commercial life to strengthen rather than sever its threads.

USE IN THE UNITED STATES.

Having observed the tremendous forces making for the adoption of arbitration it is in order to observe also that the difficulties at the beginning are so considerable as to discourage any idea that the practice can be established in a short time. In such closely organized lines as stock and grain exchanges arbitration is already in full force in our commercial centers. Close organization of all lines of trade

is needed to produce a large volume of arbitrations. This closer organization is coming about rapidly and the concentration of special lines in various trade centers is a favorable factor.

There is also the encouraging fact that we have now a great volume of irregular arbitration expressed through the adjustment of controversies directly by business men and indirectly through counsel. Every lawyer's office is an unofficial court of arbitration. The present universal fear of litigation, with its slow and costly procedure and interminable appeals, is a principal reason for this irregular method of reaching a settlement—for it ought not to be dignified by the name of arbitration. Its fault is not merely that implied by the inexperienced arbiter but that it is dominated by compulsion, rather than infused with mutuality. Arbitration is the means by which this growing function is to be methodized and regulated in a public manner.

Quite recently the National Association of Credit Men recommended this subject as one for action on the part of local bodies. The Chicago Association of Credit Men proceeded to create a Bureau of Arbitration to serve as a nucleus for Chicago business men in all lines. The American Judicature Society gave the services of Mr. Rosenbaum in the drafting of rules which are submitted as an appendix to this address. In discussing the subject at the annual meeting of the Chicago Association of Credit Men a few months ago Mr. Rosenbaum stated that there was opportunity for improving upon the one defect in the English procedure, which arises from the awkwardness and expense involved in securing a court decision on points of law. The alternative of having points of law determined by lay arbitrators introduces an undesirable factor which may be escaped in American practice.

Thereupon Chief Justice Olson of the Municipal Court of Chicago, which court has full contract jurisdiction and handles most of the commercial litigation in that city, announced that his court would co-operate with the Bureau of Arbitration of the Association of Credit Men by establishing a branch court of arbitration in which points of law could be determined by a judge specially chosen for his fitness.

In view of this action the rules were drawn so as to limit arbitrators to questions of fact. Points of law will be speedily resolved by the new branch court.

This announcement by the Chief Justice is a striking illustration of the value of large administrative powers conferred upon a responsible judicial manager. The organized court, of which Chief Justice Olson's is the best example, is strongly impelled to adopt measures which enable it to keep abreast of its work. Civil jury trials are the

most time-consuming item of litigation. The court serves its own ends by encouraging voluntary adjudication and thus saving its energies for the work in which it is indispensable. Such organized courts with definite responsibility to avoid congestion of dockets, and with administrative freedom, are certain to extend to all large cities and co-operation between such modern courts and the business world is to be presumed in the interest of both factors.

Arbitration, starting as an expedient, a makeshift, and in competition with the courts, has proved indispensable. Courts can never hope to acquire its virtues or to lessen its scope. The competitive element is disappearing. We can now look upon arbitration as being, not a makeshift, an irregular method of adjudication, but as a modern practice supplementing the field of official adjudication and making with the courts a more complete means for accomplishing a necessary work.

New ways of living and transacting business imply new machinery in the law. Society is constantly devising new tools to accomplish its work more economically. Private undertakings of a public nature are taken over, after a period of probation, and made part of government and law. Encouragement of arbitration is to be based on its own inherent worth, and with no thought that it will lessen the obligation now resting upon American courts to perform their work more efficiently. The two lines of advance can be made simultaneously and without jealousy.

THE PRESIDENT: It becomes my pleasant duty at this time to call on Mr. W. A. Gardner, of Farmington, who will now report for the Committee on Publications and Associations.

REPORT OF THE COMMITTEE ON PUBLICATIONS AND ASSOCIATIONS.

Bacon wrote it down for posterity, when the rivalry between him and Coke had resulted in Coke's ascendancy for a time. I am in good hope that when Sir Edward's (Coke's) Reports and my Rules and Decisions come to posterity (whatever now may be thought) it will then be seen which was the greater lawyer. The Coke System of reports has reached us, and following it we find ourselves in a maze of confusion and uncertainty. Though our juridical scholars have been making valiant efforts there has been a general failure to reach anything like a satisfactory presentation of a plan by which the condition confronting us may be relieved.

While Coke gained a victory over Bacon, that victory was not complete, for Bacon succeeded in establishing Equity Jurisdiction over common law judgments, to Coke's great chagrin.

Equity, though relegated to a secondary place by both Coke and Blackstone, has been gradually gaining ground. Though it took till Mansfield's time before anything was really done to set on foot the impetus which was to advance us to a realization of how much greater was the system of Bacon than that of Coke, Bacon's Rules and Decisions was lost and no one sought to give us an understanding of what Bacon's Rules and Decisions would have been had they reached us. Even Mansfield did not attempt anything of this kind. But having been a doctor of the civil law in the Edinberg University, he saw how far it surpassed the Common Law of England in its justice. As soon as he was appointed to the Bench he began to introduce the rules of the Civil Law to do away with the barbarisms of Feudalism—the English Common Law.

But that it was resented by the English lawyers of the time appears in the Letters to Junius, which gives us an article by one of them, who most likely had been defeated in some case wherein Mansfield brought in the Civil Law to enable him to do justice. Says the letter to Junius of Lord Mansfield: "He is fond of introducing into the Court of Kings Bench any law which contradicts the Common Law of England, whether it be common, civil, *jus gentium* or *levitical*," and also, "We are both agreed that Lord Mansfield has labored incessantly to introduce new rules of proceeding in the Court in which he presides; but you attribute it to honest zeal in behalf of innocence oppressed by quibble and chicanery. I say he has introduced new law, too, and removed the landmarks established by old decisions. I say his view is to change a Court of Common Law into one of Equity and bring everything into the arbitrium of a praetorian Court." This gives us a good view of that which Mansfield had strength of character to meet. Says Judge M. F. Morris, late Judge of the Court of Appeals for the District of Columbia and Professor of Law in the Georgetown University, in his work entitled, *History of the Development of the Law*, p. 274:

"In the works of Glanville, Bracton, Britton, Fleta, Littleton, Coke and Blackstone we find the exposition and the development of the Common Law of England, from the time of the Norman Conqueror and the early Plantagenets, down to the latter part of the Eighteenth Century. Two events then occurred, which, according as we look at the matter from different points of view, tended either remarkably to accelerate that development or else to subvert the whole foundation on which it was based, and to substitute therefore a radically new system of jurisprudence. One of these was the appointment of William Murray, Lord Mansfield, a Scottish jurist and a doctor of the Roman Civil Law, to the position of Chief Justice of the King's Bench in A. D. 1756, a position which he held and filled admirably for thirty-two years, when he voluntarily relinquished it in the same year (A. D. 1788) in which our Federal Constitu-

tion was adopted, and during his incumbency of which, he, quietly and yet substantially, effected by his rulings in court an almost entire revolution in the Common Law, more in accordance with the requirements of our advancing civilization than were the tenets of Coke and Blackstone. From the Roman Civil Law, Lord Mansfield introduced into the Common Law the Law Merchant of Mercantile Law, and laid the foundation for the introduction of the law of Bailments, to both of which the Common Law had previously been a stranger. And he paved the way for the great improvements of the Nineteenth Century. No other Englishman, except perhaps Lord Bacon, has done more for civilization than the Earl of Mansfield.

"Says Judge Clark: 'As to the criminal side of the docket little more than two centuries ago there were 204 capital offenses. One charged with a felony was not allowed to have counsel to speak for him, nor process to procure his witnesses, nor could he testify in his own behalf, and when, as late as 1835, an act was introduced to change this, thirteen out of fifteen judges of England protested against the innovation, and one of them threatened to resign if it was enacted. The law was enacted, but the judge did not resign.'

"Since then," says Judge Morris, "the work of reform, of elimination and substitution, has gone on gradually but surely. Almost every salient feature of the Common Law of England has been banished from our social system and from our jurisprudence. We have abolished the rule of primogeniture. We have abolished the invidious distinction between males and females in inheritance. We have abolished entails. We have discarded, as far as practicable, all the intricate incidents of feudal tenure—their name is legion, and they cannot all be reached at once, and possibly some of them are innocuous. We have restored to woman the management of her own estate, and her right to contract for herself, which was secured to her by the Roman Law and denied by the Common Law of England. We have repudiated and utterly rejected the barbarous and inhuman penal branch of the Common Law, and have legislated on the subject independently of the rigid demands of Feudalism and more in accord with the more reasonable regulations of the Code of Justinian. In brief, we have been solicitously and constantly engaged in undoing the work of the Common Law, which Coke and Blackstone declared to be the sum of human wisdom, and which the humanitarian now is almost ready to declare to have been the sum and consummation of human infamy."

But though Mansfield's efforts opened the door to the Civil Law which came in like a flood to remove the barbarous laws of the Feudal System, it is a hard thing to move the impressions of habit, and while England changed much of the old Common Law of procedure to keep up with the growing Civil Law, and 65 years ago introduced a new code of procedure, the Judicature Act, which is based on methods introduced from the Civil Law, which eliminated the old English forms, England still clings to the very thing that Bacon hoped to provide against in his Rules and Decisions; that is to say, its system of Reports, which is essentially Coke's System.

While in a perfunctory way our lawyers of today hear that the Romans had a genius for jurisprudence that far surpassed that of any

other race, it is very difficult for us to realize, in this day of scientific progress, that over twenty-five hundred years ago there existed in Greece and Rome a civilization, that in many things far surpassed our own. We have plenty of lawyers who think the Romans are back numbers, as compared with our age, in the matter of jurisprudence. Whereas, as a matter of fact, we are not to be compared to them. We hear that Bacon is regarded, by so great an authority as Macaulay, as the greatest of all philosophers, but how little do we heed it. We know that he gave altogether more time to the philosophy of the law than to any other branch of it; that he would have given to us the Civil Law in his Rules and Decisions; that he left us for Equity procedure one hundred rules, which have been in use in the English Courts of Chancery ever since, just as they came from the hand of that great master. These same rules are used in our own Chancery Courts both Federal and State.

Yet how little are our lawyers, in general, moved by the thought that our Equity is but the Civil Law or that Bacon accepted the Civil Law fully. All that Bacon desired to add was a system of decisions which would have shown the practical use of the maxims and be an aid to a judge in rendering his decisions. In this he expected to add to the stability of the law. He expected his Rules and Decisions to come to posterity, so his system must have been complete to begin with, for he knew that the greatest of all Jurisprudents had advised that "It is better to seek the fountains than wander down the rivulets." He says that the Coke System was one that wandered down the rivulets. It was wrong on principle. All Europe had adopted the Civil Law. England, though it has done away with Coke and Blackstone, has made the Civil Law of Rome the Common Law of England. Still England still feels the need of further reform, for she clings to the old fetish of following precedent even though its greatest philosopher of the law told her very plainly, when he proposed to have decisions as a part of his system, that the precedents they should follow should be fixed.

Let us learn from the greatest Jurisprudents the world ever knew. In Justinian's time there existed much the same condition in regard to the law as is before us today, in a different way. In his time there were about forty different authorities of nearly equal dignity and the conflict of these authorities had brought confusion in the affairs of the Empire. No lawyer knew when he would meet with an authority of equal dignity with the one upon which he relied, and the judge was in a predicament as to which he should honor. Says John Lord, Vol. 3, p. 49, of Bacon Lights of History:

"Justinian thereupon authorized Tribonian to prepare, with the assistance of sixteen associates, a collection of extracts from the writing of the most eminent jurists, so as to form a body of law for the government of the empire, with power to select and omit and alter, and this

immense work was done in three years and published under the title of the Digest and Pandects. This body was directed to avoid all conflicts of the authorities.' That is, to bring about a concord of the authorities. It was at first decided to give ten years to the work. It was a shame that ten years could not have been given to it, but the need for a reformation in the laws was so great and causing so much discontentment that the work was rushed through. McKenzie says, 'While it is badly arranged, as was to be expected from the haste with which it was compiled, it was all there, however. Most of the work was done by one man, Tribonian. It has already been proposed that we let the Federal Government lead the way and follow the Baconian idea of Rules and Decisions. This, of course, needs the direction of a master mind; have we any such in our midst?' We will let the answer come from a man of very fine ability as a juridical scholar, a judge of the Supreme Court of the District of Columbia, and of national reputation, and in whose opinion the writer is fully in accord. In a letter to Mr. Hughes, he says: 'The published commendations of your Ground and Rudiments of the Law, and your Equity in Procedure, I endorse; and to these I will add nothing at present as I wish to speak more particularly of your forthcoming work, The Law Restated, which, by your kindness, has been laid before me from day to day, almost as it has been produced. It is entitled to the name you propose to give it. In thirty or forty pages of text you have given us the fundamentals of the law. It is maximums in minimums. Even after your explanation of your preparation and method I still marvel at your accomplishment. It is the fruit of a long lifetime of study and reflections, of a wide knowledge of cases and rare skill in the use of them. From your previous invaluable works, which were in themselves an epitome of the law, you have still further epitomized and have cast into brief, logical and philosophical form the real substance of the law, the law that survives from age to age and in its essence and reality remains the same. Adapting your own apt figures of the tree, you have shown us the trunk as composed of the organic major maxims, and proceeding from these you have shown the lesser maxims as the branches; and in your Text-Index you have spread before our eyes the cases like the leaves upon the twigs, and pointed out the vital connection between each one and the twig, branch and trunk through which it has received the living sap; or else you have made clear to us that the case had no such real and vital connection but was a detached member, a leaf sooner or later to wither and be blown away. The trunk is of a law universal and unchangeable, of all countries and all time. Hence your work is not local or provincial but cosmopolitan. It is for the world, wherever men inhabit or commerce runs. You have wrought upon the model proposed by Francis Bacon three centuries ago, and with vaster materials to master and arrange, it appears to me that you have performed the task as he would have had it done. Your book is the master-key not only to the reason and philosophy of the law but to the library as well. With this small volume in his hand the student can unlock all the stores of legal wisdom, by following the clues you give him, first to the central case and thence to all the others where that case is cited, followed or rejected, and to the text books where it has attracted comment. In my opinion it should be at the hand of every judge, practitioner and student. In compendious form it ought to be the *vade mecum* of all.

"Perhaps the highest service you have rendered is by making plain the great gulf fixed by reason and the needs of government between the mandatory and the statutory records. You have been the first to ade-

quately state and defend the ground upon which distinction rests and to show that free constitutional government itself is bound up with the essentials of procedure—that as the law arises out of the facts, the facts must always appear that justify the judgment—that the interests of the state require it, and that parties cannot bargain it away. This is the great forgotten truth which you have brought to light and have illustrated with a clearance of comprehension and a wealth of learning that entitles you to rank with the greatest of legal authors. It is the cry on all sides that the law must be restated. In my humble opinion you have done it.

WENDALL P. STAFFORD,
Supreme Court of Chambers, Washington, D. C."

The number of distinguished lawyers and judges who are agreeing with the opinion of Judge Stafford is daily increasing. This was shown at the last meeting of the American Bar Association in talks the writer had with the prominent lawyers. Probably no man stands higher with the American Bar Association than Thomas W. Shelton of Norfolk, Virginia. He has instituted many of the reform movements which have resulted in benefiting the procedure in the Federal Court, and is doing all he can to bring Mr. Hughes to the front. Mr. Shelton fully agrees with Judge Stafford as to the ability of Mr. Hughes. Mr. Wilson declared for the Civil Law in his Indianapolis speech.

Let us look at the condition which confronts us here in Missouri and see what publication or publications most vitally need attention. In the first place we have nearly 500 Missouri Reports, which are increasing all the time; then we have the West System of ever increasing conflict of opinions, let alone all the other tooted law books. They are the result of the Coke System. Our book shelves are constantly increasing and as we are there is no end in sight. This is the result of following down the rivulets or following precedents.

Let us now stop to consider what would have been the result had our country been blessed with the system of Bacon. It would have been our system of Equity, together with a system of reports complete. Every state would have had the same system; there would not be conflicting opinions between the states; the expense would have been done away which the jury system entails. The thousand and one rules that are necessary to prevent the jury from being misled would never have been heard of, and thus the most prolific source of grounds for appeal and reversal of cases would have been cut off; at least half the time and expense of the trial of cases would have been thus eliminated.

The cost of keeping up books in the offices would be wiped out, practically; our judges would know the reasons for the law; our

judges would be jurisprudents instead of automatons, trying to find the last case, for the cases established by the Bacon System would show the reasons for the law. We would have a learned profession, the courts would be always up with their dockets and many other advantages would have resulted to us. For example, let us take our divorce suits filed here in St. Louis. A divorce suit is nothing more nor less than a proceeding in equity to rescind a contract. Supposing every divorce suit required a jury for its trial. Just stop to think how much time and expense would be added to the trials of our cases. Here is a fair consideration of the difference between the Coke System and that which Bacon intended for posterity.

If what I say is true, and every lawyer who will but stop to think will not deny the truth of it, we then have a proposition that would not take a business man a minute to decide. In talking with Judge Lamm a few days ago, he was deploring the loss of prestige sustained by our lawyers in the last twenty years. Is it any wonder that business men lose confidence in the lawyers when such a shameful condition of "due process of law" is permitted to exist as is now the case? Of course the lawyer is held accountable for it all. The lawyer holds a most important position and much of the integrity of the State and Nation depends on his integrity; so it behooves us to bring all our power to bear in the present crisis of the reformation of our laws. The course we are suggesting, I respectfully submit, is a need that should meet the approval of every lawyer who holds his honor above the betrayal of his trust. So I say, let us proceed to the fight we have before us for I firmly believe the Baconian System is coming to us with a most solemn and determined mind not to be outdone by those who will unite to protect their selfish interests. The law book trusts, which have grown rich and powerful because of the conditions which now exist, will fight to keep it alive. They will see the danger quickly and I should not be surprised to see the appearance of their emissaries at this very meeting. So I say, let us be on our guard and united with the Bar Association of the nation to stand firm and press the battle of reform, as patriots, for due process of law is government itself. The whole country demands reform. The safety of the nation depends on how we use our time now. No nation can long survive an unsatisfactory condition of its laws. Those who have grown into luxurious ease through a certain line of business, judge the right of a matter only as it benefits themselves and would not hesitate to hold on to their possessions though it were to disrupt the common good, for it seems that the controlling sentiments of many of our business successes is in line with the gambler's motto, "Never mind what happens so long as it does not happen to you." Mr. William Draper Lewis, in an able address de-

livered in St. Paul in 1906, after stating that the function of the legal profession is to administer justice, says: "Whether at any particular time or in any particular country that particular service is being performed must be tested by the answer to the facts to these questions: First, are ethical standards of the members of the profession clear and tending to improve; second, does the law, whether expressed in the development of 'cases' or legislation, tend to correspond with the felt sense of right in the community; third, is the law administered with reasonable certainty or dispatch? Mr. Lewis' conclusion was 'that our failure to perform the service is almost complete.'" Commenting on Mr. Lewis' remarks, the Central Law Journal of December 21st, 1916, says, "But to be really effective the whole bar of the land should be roused as the years advance. Is a lawyer fit to belong to a profession and regard none of the duties which he owes to that profession? If the whole bar would awaken to the fact that each member of it owes a duty to his profession, the selection of the material for the judiciary would be completely in the hands of the lawyers who are best able to judge of the material with which our various benches should be composed." The great truth involved was well expressed by the poet:

"He is true to God who is true to man;
Whatever wrong is done
To the humblest and the weakest,
'Neath the all beholding sun,
That wrong is also done to us;
And they are slaves most base,
Whose love of right is for themselves
And not for all the race."

This represents the very spirit of the Civil Law.

It is an encouragement that we have so good a representation here today of our bar, but how many are there over the State who take no interest whatever in our bar meetings, or of the reforms that are needed in our profession, in order to advance the public welfare. The motto of our state is: "The public welfare is the highest law." Our Association must exert itself to bring such an influence over the state that not a county shall fail to have a credited representative at our meetings. The County Bar Association should be roused to greater action and the members of them should be inspired with truer ideals. The welfare of the state and nation is, more than any other class, in the hands of the lawyers and always has been, and yet we see the wand of our influence slipping away from our hands and the business man taking the places for which, in the very nature of the understanding, the lawyer is more fitted to attend, all because the business man has lost confidence in the lawyer. Our present

method of selecting our judges is most unsatisfactory to the people in general, but no more so than to the lawyers themselves. Mr. W. T. Hughes made this suggestion, which I think well worth considering: Let the Bar Association select from its number the material best fitted for the judicial offices; let the number to be selected be fixed; let the names so chosen be published, so that all may know who they are; thus giving opportunity for objections to any that may be shown to be unworthy; then, with the co-operation of a committee from the State Bar Association, let the judges be appointed by the Governor from the list prepared. Divorce the selection of the judiciary entirely from politics. Have the number of those the State Bar Association may deem worthy judiciary honors always filled. If, after appointment any should prove unworthy, let his name be dropped from the list. In this way an intelligent recall should be secured.

If we should determine to follow the Civil Law and its methods it will be most important that our Judges be of the highest integrity.

In our present method the poor man has a very bad show. When he goes against a rich corporation particularly. The corporation hires its lawyers by the year and selects only the best of them. It is their business to get error into the record and appeal the case; the long time it takes for an appeal to be heard and the cost prevents the poor man, in many cases, from obtaining justice. A gentleman once said to me, "I have just had a suit brought against me by an irresponsible party. It involves that title to my property; it will take three years or more to get through the Supreme Court; the land is kept out of the market for the suit to be settled. Such a condition means nothing but blackmail for I feel sure my title is sound." Surely such a condition leaves the door open for blackmail, to say the least. Not long since an English Law Journal raised a great row because it took nine months to reach the Court of Appeals there. It was regarded as a scandalous delay. In England the Bar is held in the highest esteem. While the question as to how we are to reform our laws becomes most important, in our experiences with the legislators we are made to dread the ordeal.

About three years ago I met Judge Hardy of Pass Christian, Mississippi. He told me of his experience in that State, when he with Judge Whitfield, and another in whom the Governor had confidence, had been appointed to draft a Code for that State. Judge Whitfield was one of the most distinguished judges that had been on the Supreme Court Bench there. The Code was drafted on the lines of the Code Napoleon, of Louisiana; it then went to the Legislature. Judge Hardy said that after the Legislature got through with it it was a sight to behold. He said Judge Whitfield's remarks when it came back to them from the Legislature would not do for publi-

cation in the newspapers. Are some present who have a fellow feeling with Judge Whitfield? But it seems to us in view of the fact that one of the great objects to be attained by our efforts at reform is to secure uniform laws throughout the United States, we should co-operate with the Federal Government in securing its system. Then the states would have a better chance to enact uniform laws. In bringing the matter of Code Reform before Congress it would be a far different thing to bringing it before a state Legislature, and the chances of getting something worth while done would be vastly improved. The acceptance of good reforms by Congress would give those reforms such prestige, that when brought to the state Legislature it would be much more likely to be accepted without quibble.

The day of Bacon is at hand; already we find leading men of the East and the West moving into line. Chicago is impregnated with it. The law schools are beginning to wake up in Chicago. I received a letter from Mr. Charles Capen of Bloomington, Illinois, a leading lawyer there, and the dean of the Bloomington Law School, a graduate of Harvard. He had read "Bacon's last Rules and Decisions." He said it is new but if he had said the right thing he would have said it is from antiquity. Mr. Hughes says that we could put out law into forty volumes and cover the body of it. Just think what it would mean to the Missouri lawyer to do away with his ever increasing products of our Courts of Appeals and be established on forty volumes fixed. Think that the Missouri lawyer would know the laws of every state and the Federal Courts. Mr. Wilson, in his Indianapolis speech, declared for the Civil Law. If you should attempt to take from the Louisiana lawyer his civil law you would attempt to take from him his dearest possession. What is the condition in other states? Nearly all declare them to be in confusion. We are now on the verge of establishing in America the law which is to be that which is to stand for the federation of the world. Was Tennyson but a visionary poet or was he inspired by a divine power, when he prophesied this?

"I doubt not through the ages one increasing purpose runs,
And the thoughts of men are widened with the process of the suns;
For I dipt into the future far as human eye could see,
Saw the vision of the world and all the wonder that would be;
Saw the heavens fill with commerce
And there rained a ghastly dew
From the nations' airy navies grappling in the central blue.
Till the war drum throbbed no longer
And the battle flags were furled
In the Parliament of man, the Federation of the world.
There the common sense of most shall hold a fretful realm in awe
And the kindly earth shall slumber lapt in universal law"

REPORT OF THE COMMITTEE ON HISTORICAL DATA OF
THE BENCH AND BAR OF MISSOURI.

St. Louis, Sept. 29, 1916.

To the President and Members of the Missouri Bar Association:

As in former years, reporting on behalf of your Committee on HISTORICAL DATA OF THE BENCH AND BAR OF MISSOURI, we enter a plaintive plea for more active co-operation on the part of members of the Association in the purposes for which the Committee was formed, namely, the collection and presentation of historical materials within the range of the title of our Committee. More especially do we desire to gather and preserve reminiscences of those personal incidents in the life and experience of our brethren in the profession which usually escape the eye of the serious historian who records the birth, death, marriage, offices, political and other honors and achievements of the subject, omitting much that his contemporaries admired and enjoyed in daily intercourse with him. The forensic performances of our leaders, the charm of their personality, the scintillations of their wit, their adroitness in repartee and many other characteristics which fill out the full picture of their human side, possess an interest and a value quite equal to that of their official record of good deeds. Such materials we wish to add to the reports of our proceedings at these state bar meetings in aid of the future historian. Your Committee have experienced difficulty in obtaining papers containing the sort of materials we wish to present to the Association. We appeal to all members interested in the welfare of our body to give us the benefit of their own experience, with a view to preserving those ephemeral incidents in the daily life of the Judges and members of the bar which form so interesting a background to the history of our profession and which possess invaluable interests when the dramatis personae who took part have passed from the stage. One of our Committee, the late Judge McDougal, contributed an entertaining paper, along these lines, at a previous meeting, and we have several outstanding promises of papers to be finished in the near future for your edification. Some of the members of your Committee have in preparation reminiscences from their own observation to be presented at a later time. Your Committee have nothing further to report at this time than a series of efforts towards carrying out the objects of their appointment. We bespeak the helpful assistance of all members of our Association towards securing

contributions on the topics mentioned and your more active participation in the purpose of the Committee.

Respectfully submitted,

SHEPARD BARCLAY,
VINTON PIKE,
For the Committee.

Hon. Robt. Lamar was then called to the chair, and introduced Judge Henry D. Clayton, of Alabama.

UNIFORM FEDERAL PROCEDURE.

Mr. President and Gentlemen:

Let me thank you for the pleasure of participating in your proceedings and, at the same time, acknowledge that the task imposed upon me was simplified, so far as the subject I am to speak on is concerned, for it was suggested in the courteous invitation that brings me here. Doubtless, this theme was proposed because I twice introduced into the Congress and took an inconspicuous part in having considered there, at least to some extent, the measure to authorize the Supreme Court of the United States to make rules governing the procedure in cases at law in the Federal District Courts, just as the Supreme Court has heretofore, pursuant to statute, promulgated rules governing the conduct of equity cases.

We cannot afford to be indifferent to any obvious necessity; and surely the lawyers who desire the orderly, speedy and correct administration of public justice must be interested in the necessity for reform in the procedure of the Federal Courts of first instance. As you know, many of the most distinguished living lawyers and publicists⁽¹⁾ in our country, as well as some of our judges, within the bounds of propriety, have, particularly since 1912, advocated with tongue and pen this measure in behalf of the desirable reform sought for in this bill proposed for that purpose.

That wise reformation of this procedure will facilitate the dispatch of business by the courts, we are justified in believing; and we know

(1) I regret that I have not at hand the repeated statements made by President Taft, in varying form, in his messages to Congress and in hearings before the Judiciary Committee of the House.

From President Wilson: "I do know that the United States, in its judicial procedure, is many decades behind every civilized government in the world; and I say that it is an immediate and an imperative call upon us to rectify that, because the speediness of justice, the inexpensiveness of justice, the ready access of justice, is the greater part of justice itself. If you have to be rich to get justice because of the very cost of the process itself, then there is no justice at all. So, I say, there is another direction in which we ought to be very quick to see the signs of the time and help those who need to be helped."

From President Cleveland: "Nothing can be more deplorable than that open criticism of the decisions of courts which, all at once, has become fashionable. * * * They are danger signals, and failure to see them may introduce practices which will threaten the independence of the courts. * * * If their decrees are not respected or the judges who preside over them are not men of the highest reputation for ability and fairness, then all the forces of discontent will unite in an assault upon them."



HON. H. P. CLAYTON
United States District Judge, Mid-Northern Districts of Alabama

that the general public have the right to demand the highest business efficiency in the administration of the law. Indeed, this business administration is inseparable from the due application of that law. You need not be reminded that "to no one will we sell, to no one will we refuse or delay right or justice" is a guiding principle of our law older than the written words of Magna Charta. And, yet, we must confess that in this day of enlightenment, superior to that enjoyed by the people in the year 1215, when the king was forced to subscribe to this principle, justice is often delayed and sometimes altogether defeated by rules of procedure—rules sometimes archaic, sometimes highly technical, and sometimes wholly senseless. Our advanced and advancing civilization with its greatly developed but growing industrial and social activities, with their multiplied instrumentalities and agencies, and the consequent complex condition of modern society in our highly commercial age, have united in rendering many of the common law procedural rules worse than useless. The present chaotic condition of procedure, carrying much antiquated form and technicality, modified, it is true, to some extent by statutes, is, of course, unsuited to modern requirements. And sometimes this unsatisfactory condition of law, merely administrative in its nature, has been rendered worse by the demonstrated vices of statutes and newly invented technicalities, so that this condition and these circumstances have obstructed and do now obstruct the business of the courts.

No intelligent layman or lawyer would insist that proper procedure preliminary to the trial of any cause can be dispensed with or that any system can be devised to meet all the new exigencies that may arise; but it must be admitted that our adjective law has not kept pace with the progress of civilization and the growth of substantive law. And the truth of this is not subtracted from by the admission that much effort has been made to reform court procedure. We know that the substantive law is the very essence of government, and that law is the enforcement of justice among men (1) and we also know that the adjective law is in theory, and ought always to be, in fact, the efficient aid of the substantive law. Indulging a poetic reference, it is said "words are the daughters of earth and * * * things are the sons of heaven." It is not altogether fair to liken woman to the multitudinous words sometimes employed in pleadings, but the idea is that the substantive law is the very essence of government itself, and the means employed for its determination and operation are no more than its hand-maiden. Therefore, we come to the full recognition of the importance of the substantive law, and to the realization that procedural law is important and necessary only for the proper enforcement of our law which goes to the vitals of every litigated controversy of whatever character.

(1) *McAllister v. Marshall*, (Pa.) 6 Bin. 338, 350.

It is a terrible indictment, but nevertheless true, the words of a distinguished statesman and a great lawyer, that "throughout the United States in varying degrees, justice is sadly tangled, and the conditions under which a plain, honest man going into court to seek redress of a wrong are well nigh intolerable. There have arisen a class of lawyers whose sole business and reputation is built upon their ability to make use of statutory technicalities whereby delays are practically endless. It is a fact that men have taken cases for wealthy clients with the understanding that their sole purpose was to put off the final adjudication of the cause as long as possible. Sometimes they have guaranteed that the case shall never come to trial. In the matter of these statutory stumbling blocks my own State of New York is the worst of them all." (1) And it is not inapt to say here that New York enjoys the code system of pleading, a system that has been greatly eulogized on account of its supposed simplicity and beauty; and it is also pertinent to observe that the code system of pleading prevailing in that state has been almost condemned by many of the lawyers of that state conspicuous in their profession.

Having heard one witness from a code state testify that "justice is sadly tangled" by the use of "statutory technicalities" perhaps others are not necessary for the establishment of our contention that the state code system of pleading is unsuited to the Federal Courts. And that the common law system of pleading, modified in some respects in one state and modified in other respects in another state, cannot be followed and ought not to be followed in given cases—cases of increasing frequency—we cannot do better than to quote the words of an able jurist of Alabama, then a justice of the Supreme Court of that state, where the common law system of pleading prevails. This disciple of Chitty and Stephens tell us (2) that "* * * our system of pleading is like an exogenous plant, whose capacity for multiplying limbs is only limited by the climate and the fertility of the soil. It must be admitted that no system of pleading can ever be perfect in its operation and effect, as long as men are imperfect. And, if men were perfect, almost any system would do; but as long as morality lags behind intelligence, as long as men have more knowledge than virtue, we ought, in all things that pertain to our government, have that system which will give the greatest aid and comfort to these neglected children. What that system should be in this state could, in my opinion, best be devised after a most thorough examination into the workings of the different systems of pleading of the different states and countries of civilization by a body of men most learned in the law and altruistic in character.

"It may be true that the common law had its snake heads; but it seems to me that in nearly every instance, where one has been cut off by

(1) Honorable Elihu Root.
(2) Pollak v. Winter, 53 So. 339, 340.

our Legislature, two or more have grown out to take its place. Under our present system one may plead as many pleas as he pleases; he may plead inconsistent pleas. The plaintiff may reply with as many replications as he pleases, and with inconsistent replications, and so on. As to whether there shall be one or a thousand issues of law or fact depends upon the 'climate and the fertility of the soil.' The only natural place for this process to stop, with counsel who understands his business, is when he has reached a point where he feels reasonably sure of a verdict or a reversal of the judgment."

And then the learned judge calls attention to a practice indulged in in Alabama that ought not to be possible, if it is possible, in any Federal Court, for he proceeds to say that "we have also the written charge which counsel for either party may ask. In this, if his vocabulary is large, his knowledge of the meaning of words accurate, and his imagination vivid, he may ask a dozen of such charges on each point of law involved in the case, each one stating the point correctly, but in different words; and he may also ask a dozen more on each point which states the law almost correctly. Supposing there were only 100 issues, and only 12 written charges asked by each side upon each issue, there would still be 1200 written charges to each side to be passed upon by the trial court. Suppose that 600 are given and 600 refused to each side, then there would be 1200 to be reviewed by this court, besides the probability that the jury was too much instructed to understand the instruction. Do I object to the system? I cannot say that I do. While as a citizen or a judge, I deplore it, yet as a lawyer and dialectician I rejoice in it. As a means for the administration of justice, its efficiency is to be doubted; while as an intellectual gymnasium its appointments could be scarcely improved upon." (1)

We need not multiply quotations from eminent lawyers and jurists showing that ancient rules and procedure are often not compatible with the due course of justice in this day and time. However, I cannot forego a short excerpt from an opinion (2) by Mr. Justice Holmes. In the case referred to he said: "That the bill of rights for the Philippines giving the accused the right to demand the nature and cause of the accusation against him does not fasten forever upon those islands the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert." That is an exquisite statement—that "the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert."

(1) Since the opinion quoted from was written the rule with reference to the written charge has been greatly modified.

(2) *Paraiso v. United States*, 207 U. S. 369, 372.

After having heard these expert witnesses, if indeed you do not know as much about the subject as the witnesses, I think you will agree that something ought to be done to supply the deficiencies of the state code system where that prevails, and the deficiencies of the common law system as well where that is followed, so that the Federal Courts of first instance may not be hampered by the requirement that the procedure of the state must be followed by such Federal Courts "as near as may be." Certain it is that out of the existing confused, uncertain and unsatisfactory method of federal procedure, if it can be called a method, a way should be found.

That leads us to the suggestion of the other academic principles that how the one party may come into court and how the other may be brought in should be plain, proper cause being shown; and that how the matter in controversy shall be stated by the plaintiff ought to be simple, free from repetitions—repetitions often characterized by refined, but immaterial, differences in the mere phraseology employed. And that the answer, in whatever form, whether setting up law or fact in defense, should be responsive, direct, easily understood and free from redundancies evidencing merely the ingenuity of the skilled pleader in the invention of hair-splitting and metaphysical refinements. In short, the procedure ought to be made to conform to the common sense rule that the points in litigation should be stated with all practical conciseness, simplicity and clearness. It is a reproach to the practical side of government that under any system of court procedure, or on account of a lack of proper system, the plaintiff, seeking the vindication of his rights, or reparation for his injuries, is permitted to present his cause in counts, generally speaking unlimited in number, length or expression except by the pleasure, ability or discretion of the draftsman; and, yet, such practice in pleading is still permitted. This manner of practice, in co-operation with other deficiencies in pleading, has been the fruitful cause of multitudinous technical questions which could not possibly have been raised under a well devised system of procedure. Take almost any volume of published reports, state or federal, and you will find that about half, and sometimes more than half, of the points passed upon related to procedure rather than to the merits of the cause litigated.

Going on, let it be emphatically said that the present lack of system in pleading in law cases in the district courts of the United States is attributable to the fact that no uniform system of procedure has ever been had. Indeed, those familiar with the history of our country know that no systematic procedure to govern law cases in the federal courts has ever been attempted. Furthermore, it is a

truth demonstrated by the existing unsettled, confused and uncertain condition of federal procedure that there is necessity for an authorized way out of such condition. It also readily occurs to you that differences, sometimes accountable and sometimes inexplicable, obtain in the various states and in the various federal jurisdictions. There are 48 states and each has its own peculiarities in procedure, and probably if strict conformity by the federal courts to state procedure had been possible we would now have 48 distinct varieties of federal procedure, that is to say 48 distinct varieties as fully undeveloped and unsettled as procedure is undeveloped and unsettled in the several states. Whatever speculation might be indulged in that regard, we may put aside when we are brought face to face to the consideration of the ascertained short-comings, differences and confusion in our federal system of procedure. We need not speculate, for it is enough for us to know that we have no well considered and systematic procedure to govern the district courts of the United States in the trial of law cases and to know at the same time that we ought to have such procedure. We are also informed that Congress in the very beginning purposely failed to provide a real system in the practice, pleadings and forms and modes of proceeding in civil causes, other than equity and admiralty, in the district courts, but remitted the matter to the courts and left it with them to act upon the statutory direction that the procedure "shall conform as near as may be to that existing in like causes in the courts of record within the state in which the district courts are held."

Uniformity in procedure was not intended, and it is evident that under such directed plan there could not be any scientific, well devised and uniform system. The act of Congress, changed but little from time to time, is now expressed in Section 914 R. S. and, of course, by its very terms it was intended to secure partial conformity of the federal procedure to that of the state. Out of the construction of this statute has come the judicial ascertainment that the statute has not even secured very much of the expected conformity. The practitioner knows that no pleader in any district court can tell in every case, indeed he knows that in many cases he cannot tell whether, or to what extent, the state procedure in any given jurisdiction will be followed in the district court. It has been often and well said that this conformity statute has been as much honored in the breach as in the observance—honored by the good and deferential reasons given for its breach, honored by the imperative observance of the qualifying or licensing phrase "as near as may be." Of course, that the courts had the right to not conform in proper cases was in the Congressional contemplation, for the statute itself in providing that the federal courts shall conform their procedure to the

state course "as near as may be," logically, if not in *ipsissimis verbis*, Congress declared that the statute should not be observed to any other or further extent than to this just and practicable one—"as near as may be." Latitude was allowed, and the wisdom of having it has been made manifest by the unanswerable reasons given in the adjudged cases where the federal courts have refused to conform their procedure to that of the state. In a case decided June 12, last, the opinion by Justice Pitney, a number of cases are cited (2) which show the impracticability, or the injustice, of conforming to the state practice or procedure. And the first of these is *Nudd v. Burrows* (1) which has been followed and referred to by judges and writers more often than any other case pertinent to the conformity statute. It is not necessary to deal here further with this conformity statute, for it is a proven failure, and even the most salient reasons for its enactment have passed away with conditions long since changed. We are not now a new country entering upon the untried experiment of government. We live in the happier time when our form of govern-

(1) 91 U. S. 426.

(2) In *Nudd v. Burrows*, *supra*, it was held that the conformity act, R. S. Sec. 914, did not require the trial judge to permit the jury to take with them upon retirement to their room the written instructions given to them although the Illinois Practice Act required that the written instructions should be taken by the jury in retirement and returned with the verdict.

The practice respecting exceptions in the federal courts is unaffected by the conformity act, R. S. 914. *United States v. U. S. Fidelity Co.*, 236 U. S. 512, 529.

In *St. Clair v. United States*, 154 U. S. 134, it was held that where no exception is taken on the trial of a person accused of crime to the action of the court below on a particular matter that action is not subject to review in the Supreme Court, although the practice and statute of the state in which the trial took place provide otherwise.

In *Chateaugay Iron Co.*, Petitioner, 128 U. S. 553, it was held that the practice and rules of the state court do not apply to proceedings taken in a circuit court of the United States for the purpose of reviewing in the Supreme Court a judgment of such circuit court; and such rules and practice embracing the preparation, perfection, settling and signing of bills of exception are not within the "practice pleadings, and forms and modes of proceeding" which are required by R. S. 914 to conform "as near as may be" to those "existing at the time in like causes in the courts of record of the state."

In *McDonald v. Pless*, 238 U. S. 264, it was held that the conformity act does not apply to the power of the court to inquire into the conduct of jurors.

Cases relating to the conformity act are collected by Justice Pitney on p. 686 of *Advance Sheets of Opinions*, U. S. Sup. Ct., July 15, 1916, in case of *Spokane E. & I. R. R. Co. v. Campbell*.

"The state laws cannot control the exercise of the national government nor in any manner limit or affect the operation of the processes or proceedings of the national courts." Judge Story in *Beers v. Huffman*, 34 U. S. 328, 359, and see what follows on p. 360.

Mr. Justice Hunt in *Insurance Company v. Moss*, 20 Wall, 445, 453, said: "The jurisdiction of the federal courts, under this clause of the Constitution (Art. 3 Sec. 2) depends upon and is regulated by the laws of the United States. State legislation cannot confer jurisdiction upon the Federal Courts, nor can it limit or restrict the authority given by Congress in pursuance of the Constitution. This has been held many times." Citing *Railway Company v. Whitton*, 13 Wall. 286; *Payne v. Hook*, 7 Id. 427; *The Moses Taylor*, 4 Id. 411.

The Louisiana statute which required verbal evidence, if either party requested, to be taken down in writing by the Clerk, in order to be sent up to the Supreme Court in case of appeal was not followed in the United States Court for the Eastern District of Louisiana. The Supreme Court in this case, *Parsons v. Bedford*, 3 Pet. 433, 444, said: "Of itself the course of proceeding under the State law of Louisiana could not have any intrinsic force or obligation in the courts of the United States organized in that State; but by the Act of Congress of the 26th of May, 1824, ch.

ment, with three separate but co-ordinate departments is a demonstrated success. Our judiciary has been so successful in discharging the judicial functions of government that we need not try any other, and we have reached that stage in American jurisprudence when we no longer find it necessary to adopt or to follow altogether the administrative methods of any other country; we are not justified in retaining the unimproved procedure inherited by our forefathers from

181, it is provided that the mode of proceeding in civil causes in the courts of the United States that now are or hereafter may be established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the district courts of said State; provided that the judge of any such court of the United States may alter the times limited or allowed for different proceedings in the State Courts and make, by rule, such other provisions as may be necessary to adapt the laws of procedure to the organization of such court of the United States and to avoid any discrepancy, if any should exist, between such State laws and the laws of the United States. This proviso demonstrates that it was not the intention of Congress to give an absolute and imperative force to the mode of proceedings in civil causes in Louisiana, in the court of the United States; for it authorized the judge to modify them so as to adapt them to the organization of his own court. It further demonstrates that no absolute repeal was intended of the antecedent modes of proceeding authorized in the courts, under the former acts of Congress, for it leaves the judge at liberty to make rules by which to avoid any discrepancy between the State laws and the laws of the United States."

A State statutory right to a change of venue was denied in *Kennon v. Gilmer* (1889) 131 U. S. 24. That the provisions for uniformity do not extend to modes of procedure established by judicial interpretation of common law, but only to statutes, was held in *Wall v. C. & O. R. R. Co.*, (1889) 95 Fed. 398. That actions at law regardless of State statutes, must be brought in the name of the owner of the legal title, was held in *Norfolk Co. v. Sullivan*, 111 Fed. 181. That statutory substituted service is not applicable to the Federal Courts, see *Bracken v. Union P. R. Co.*, (1893) 56 Fed. 447. That a federal rule of practice prevailed regardless of a subsequent State statute altering the time in which a writ is returnable, *Shepherd v. Adams* (1898) 168 U. S. 625. That amendments of process and pleadings allowed by State statutes will not be followed when inconsistent with Federal statutes or amendments, *Henderson v. Louisville R. Co.*, (1887) 123 U. S. 64. That an equitable counter claim cannot be set up in the Federal Court, *Church v. Speigleburg* (1887) 31 Fed. 601. That the granting or refusing of a continuance is a matter within the discretion of the court, notwithstanding a contrary State statute, *Texas R. Co. v. Nelson*, 50 Fed. 814. That the selection of jurors does not follow the method prescribed by State statutes *Brewer v. Jacobs* (1884) 22 Fed. 217. That a State statute permitting a party to be examined by his adversary in advance of the trial will not be followed, *Union P. Co. v. Botsford* (1891), 141 U. S. 257. That the competency of witnesses depends upon Section 858 R. S. and not upon State statutes. To effect this it was held that Sec. 921 R. S. prevailed over Sec. 914, R. S.; that the production of books and papers was regulated by Sec. 721, R. S., as amended, and not by State statutes; that the Federal Courts might instruct a verdict or order a compulsory nonsuit for the defendant or plaintiff regardless of a State statute, *Vicksburg Co. v. Putnam* (1886) 118 U. S. 553. That instructions need not be in writing, *Lincoln v. Power Co.*, (1894) 151 U. S. 442. That a State statute requiring instruction or a special verdict need not be observed, *U. S. Mutual Co. v. Barry* (1889) 131 U. S. 119, 33 Fed. 60. The granting and refusing of new trials is not controlled by State statutes, *Newcomb v. Wood* (1878) 97 U. S. 583. That the question of costs is not controlled by State statutes, but by Sec. 823 R. S. which was held to supersede Sec. 914 R. S. That everything after a judgment looking to its review in an Appellate Court is regulated solely by Acts of Congress, *Hudson v. Parker* (1875) 156 U. S. 281. That regulations concerning the preserving of exceptions are not governed by State statutes, *Chataugay Co. Petitioner*, (1882) U. S. 553. That the means of enforcing a judgment are not within State statutes but Sections 915 and 916, R. S. *United States v. Train* (1882) 12 Fed. 853. That a stay of execution is not governed by State statutes, that Sec. 916 supersedes Sec. 914 R. S. *Lancaster v. Keller* (1887) 123 U. S. 389. That mandamus proceedings will not follow State statutes, *Batch Co. v. Amy* (1871) 13 Wall. 250. That a proceeding to restore records is not within Sec. 914 R. S. 3 Biss. 307. That the question of jurisdiction was controlled solely by Federal statutes, *Mexican R. Co. v. Pinckney*, 149 U. S. 205. That wherever Congress has legislated on or in reference to a particular subject, involving practice or procedure, the State statutes are never held to be controlling, *Harkness v. Hyde*, 98 U. S. 476. See cases cited in *Webb v. Southern Ry. Co.*, 235 Fed. ———.

the mother country, for such methods without many and material alterations cannot furnish the best guide for our courts today. Moreover, it is true to say that we have added to and changed much of the substantive law, including that which was inherited by our country, so that even the common law of our country today has by growth necessarily become immeasurably greater than the common law of the eighteenth century. And volumes have been written on American law, the statutory and customary, all evidencing the growth of our substantive law. But it is lamentable that our adjective law has not grown either in such proportion or wisdom as the requirements of our American life now demand. We are living in the present and much of the old customary law, as well as the old procedural, is now inappropriate, inapplicable and inadequate. From the grave of the dead centuries no voice can come to stay the progress of our jurisprudence, nor can things merely because they are venerable be justly allowed to fetter our courts in adjudging under American law and administering justice according to American ideas of the twentieth century.

There no longer exists any ground for the other reason which was given in the beginning for the adoption of the state system of procedure, that ground being that the lawyers in the several states and the judges there themselves were acquainted in those ancient days with the procedure in the state courts and that a federal system, if one had been devised, would have been a mere experiment and would have caused inconvenience to these lawyers and judges, and necessitated the learning of another system of procedure. It was said that they knew the rules in Chitty and Stephens on Pleading, and the like, and that they ought not to be required to learn others; and that, moreover, every practitioner should be required to travel the same devious path that they had traveled and be required to study the hornbooks just as they had been compelled to do.

But even this inconvenience and knowledge of the practitioner in a jurisdiction where the common law system of pleading modified by state statute obtains, or where an entire code system is in force, are not respected. Even the lawyer skilled in the methods or rules of his state court does not and cannot in many cases know how to formulate his side of the cause in the various preliminary respects, so that it may properly and speedily reach the court and jury for determination at the trial. In many cases it has been made manifest that conformity with state procedure would not consist with the due administration of justice in the federal courts; and, finally it may be said that the stickler for the application of state procedure in the federal court must know that in addition to the uncertainty whether

the federal court will follow the state procedure, in any given case, he is subjected to the inconvenience and labor of searching for and studying the rules which the federal courts have applied in cases analogous to his. And the final answer to the argument of inconvenience urged against the reformation desired is, therefore, that it will be easier for the practitioner and the court to master the system of procedure created by authorized Supreme Court-made rules than it is to keep up with the uncertainties and the evolution that have supplanted very largely the common law and code systems of pleading and procedure in the practical workings of the federal district courts.

Conformity being a demonstrated failure, then indeed, it behooves Congress and the Bench and Bar co-operating, to find the remedy; and, to repeat the other idea, this ought to be done now, in furtherance of the correct administration of justice.

It is believed by nearly all of those who have studied the subject that the remedy for the highly unsatisfactory condition in federal procedure ought not to be attempted through the medium of a rigid legislative code, and unamendable, except by the slow process of legislative regulations designed to control at every important step the entire procedure and practice of the federal courts. It will be hard to make this inflexible statutory method workable and efficient, admitting that it is possible for Congress to provide a plan so comprehensive. Nor are the senators and representatives justified, it is respectfully said, in waiting for the development of a federal system of procedure to be wrought out and established by the slow process of evolution, the process that the courts are now compelled to pursue and are pursuing in making successive rulings in analogous cases. It is submitted that the important reform demanded can be the better and more speedily secured by the rules to be formulated and promulgated by the Supreme Court of the United States.

These rules will not trespass upon the substantive law; nor will they fail to retain all that we now have in procedural law which experience has shown to be good and helpful in the application of the real law in any case. And it is not to be doubted that such rules will make more certain and speedy the vindication of rights and, as a corollary, the condemnation of wrongs. Indeed, the object of the establishment and maintenance of courts is that they may fairly and efficiently adjudge and administer under established law. It may be assumed that no judge, or no active practitioner, will deny that in addition to this desired simplicity, more than probable celerity, and increased efficiency of the courts in the dispatch of business there will also come greater economy of the public time and money con-

sumed in administering justice. It is apparent that the existing lack of system in procedure is conducive to wastefulness of both the time and funds that belong to the public, as well as to the waste of time, money and property of individual litigants, who have sought the court or who have been compelled to submit to the courts for settlement of business controversies. Officials, jurors, witnesses and parties are frequently unduly forced to wait the settlement of preliminary questions arising out of pleadings, pleadings often long drawn out, before the real cause for trial can be reached. I have in mind now an actual illustrative instance. Not many years ago, in my own state, there was a suit on an insurance policy covering property that had been destroyed by fire. The company was represented by a former distinguished judge of Alabama, noted for his sense of humor as well as his great learning. Associated with him was an excellent lawyer from a so-called code state. The court had been in session nearly all day long listening to arguments on numerous pleadings and the end was not yet in sight. The brother from the code state sat while his associate and the other common law pleaders in the case argued and argued, for these gentlemen were adepts in the gymnastics of common law pleading. Finally, the visiting brother cried out in agony to his associate: "Just let me get to the jury," (he was a great advocate) and inquired, "When will I be able to get there?" His Alabama associate said: "I don't know, for probably after we have gotten through with the complaint and its numerous counts and demurrers thereto, with the pleas and the probable replication and rejoinder, there may come a rebutter, a sub-rebutter and more. But, I really think that I can get you to the court in three or four days and probably to the jury by the beginning of next week." Such a case may excite our sense of humor, and such method may afford pleasing and profitable exercise to the performing lawyers, but the expense of it, to say nothing of the delay to other causes, and the consequent crowding of the docket should be taken into consideration. The natural reflection is that the courts ought to be set free to better conserve public funds and the money and property of individuals. They ought to be aided in their effort to give, at the lowest practicable cost, and, in our American spirit and in our American schoolboy vernacular, to every man "a fair show for his white alley," where the game is square and according to just rules.

The proposed measure which it is believed will afford the remedial procedure was known in the 63d Congress as H. R. 133, and in the present Congress as H. R. 7572, a measure that has the endorsement of the American Bar Association and kindred organizations, besides the support of many able jurists, members of appellate

courts, and the favor of a considerable number of business associations. This bill provides that the Supreme Court shall have the power to prescribe: (1) the forms and manner of service of writs and all other process; (2) the mode and manner of framing and filing proceedings and pleadings; (3) of giving notice and serving process of all kinds; (4) of taking and obtaining evidence; (5) drawing up, entering and enrolling orders; and (6) generally "to regulate and prescribe by rule the forms for the entire pleading, practice, and procedure to be used in all actions, motions and proceedings at law of whatever nature by the district courts of the United States and the District of Columbia." Provision is also made that when such rules of court so authorized shall have been promulgated all laws in conflict therewith shall cease to be of further force and effect. (1)

To any objection to its constitutionality, it may be said that in the very beginning the Supreme Court of the United States gave practical definition of the powers granted in the Constitution establishing courts of equity by adopting the English equity rules obtaining at the time of the ratification of the Constitution. In the progress of the country, these rules, in many respects, became unsuited to our modern conditions. But the well known conservatism of the Supreme Court prevented, at least in some degree such modernization as was demanded by the changed conditions wrought during the flight of years. It is familiar to you that Congress declared the Supreme Court should have power to create or formulate rules and generally to regulate the whole practice in equity and that rules have accordingly been made by that august tribunal and these rules became effective February 1, 1913, and they now constitute the written adjective law of the federal equity courts.

Because of the failure of the Conformity Statute and the bad effects of an antiquated, inadequate and unscientific procedure for law cases, the idea for this bill was originated by the American Bar Association and with the co-operation of eminent lawyers (a committee of that body), this bill was written and it was afterwards introduced into Congress. It has received much consideration at the hands of the respective committees on the Judiciary of the Senate and House of Representatives, and it has been favorably reported to the House.* The respectful insistence is that it is a wholesome measure that Congress has constitutional power to pass it, and that there is the wise precedent of the case of the statute providing for the court-made equity rules.

(1) By Mr. Webb, Chairman of the Judiciary Committee.

(*) A copy of this bill is printed in the foot-note on page 21 post.

That Congress can confer the duty upon the Supreme Court to establish rules of procedure for the district courts was settled almost at the beginning. It is not to be forgotten that Chief Justice Marshall said (2) nearly a hundred years ago that "it will not be contended that Congress can delegate to the courts, or to any other tribunals, powers which are strictly and exclusively legislative. But Congress may certainly delegate to others, powers which the Legislature may rightfully exercise itself. Without going further for examples, we will take that the legality of which counsel for the defendant admit. The 17th section of the judiciary act, and the 7th section of the additional act, empower the courts respectively to regulate their practice. It certainly will not be contended that this might not be done by Congress. The courts, for example, may make rules directing the returning of writs and processes, the filing of declarations and other pleadings, and other things of the same description. It will not be contended, that these things might not be done by the Legislature, without the intervention of the courts; yet it is not alleged that the power may not be conferred on the judicial department." Almost synchronizing with Chief Justice Marshall's utterance, Mr. Justice Thompson, speaking for the court, said (3) that "Congress might regulate the whole practice of the courts, if it was deemed expedient so to do; but this power is vested in the courts; and (referring to the act then under consideration) it never has occurred to anyone that it was a delegation of legislative power." Moreover, it is familiar to you that, with but few exceptions, the rules and regulations under which the different executive departments work are made by the departments themselves, and not by Congress; and that without such rules there could not be an orderly performance of the duties imposed upon these administrative departments and the legislatively created officials, commissions and commissioners. Now, the Constitution commits the administration of the law in every litigated case to the courts and it is, therefore, not only constitutional but wise and expedient that the making of rules of procedure, using that word in the comprehensive sense, should be committed to the Supreme Court. And it is submitted that the views of lawyers who have specialized in the highly technical art of pleading and carry around in their heads the "quiddets and quilllets" of the law ought not to stay the progress so obviously demanded. The real answer to the objection of the quiddity practitioner is that he can just as easily master the simple rules promulgated by the Su-

(2) *Wayman v. Southard*, 10 Wheat. 1, 41.

(3) *U. S. Bank v. Halstead*, 10 Wheat. 51. See also *Chick v. U. S.* 195 U. S. 58, *Nolten v. Moore*, 178 U. S. 95 & *Cap. Trac. Co. v. Hoff*, 174 U. S. 1 and *Vicksb. R. Co. v. Putnam*, 118 U. S. 345.

preme Court as he can keep up with the various rulings on pleadings in which the reported cases do most abound, and to which I have adverted. It may be said again that such rules would make for certainty, order and proper speed in the trial of justiciable causes, pre-termining if you wish, a consideration of the waste to the public and to individuals.

The Supreme Court needs no panegyric. There it stands and there it must stand as long as our popular representative government shall live. The high responsibilities of that court and its exalted character guarantee that whatever may be done under the bill proposed, it will be well and wisely done.

It has been suggested that the measure might provide for a commission to be composed of lawyers and judges to formulate these rules. To this let me hazard the reply that such is not necessary. For the court is composed of pre-eminently able and skillful lawyers who can best determine what the rules should be. They will carefully consider all proper rules and after study and conference, and after consultation with other learned lawyers, if it is deemed helpful to consult them, the rules will be drawn and made effective and will constitute a well conceived and a well wrought out system or plan of procedure that will be highly remedial where remedy is now so much needed. And, finally, it may be said that the Supreme Court now has committed to it, under the organic law, powers and duties far exceeding in importance to the public and to the individual citizen those now proposed to be conferred in the mere matter of procedure. Let me reduce my subject to interrogatory form.

Shall the attempt to conform Federal procedure to that of the state be persisted in and thereby multiply the cases showing the impracticability of such conformity? Or shall we have a legislatively made code unamendable except by the slow process of Congressional enactments to be had from time to time as experience shall show to be necessary? Or shall we abide the present impossible conformity statutory directions with consequent non-conformity and confusion and await the slow growth of a federal system to be worked out by court rulings in particular cases—a system by evolution? Or shall we have the plan of Supreme Court-made rules furnishing a modern and workable system readily improvable wherever and whenever improvement may be desirable?

Judicial section of the American Bar Association. Report of the Executive Committee.

"At the meeting at Salt Lake in 1915, there was referred to this committee the question whether the Judicial Section should take affirmative, definite action towards securing simplicity and uniformity of procedure in the Federal and State Courts throughout the United States. We respectfully report:

I. Very few question the great value of a simple and uniform procedure to the administration of justice. Besides its intrinsic merit the effort to attain it is in

President McDavid in the chair.

MR. E. A. KRAUTHOFF: I move that the thanks of this Association be tendered to the Honorable Henry D. Clayton for his instructive and able address, and that he be elected an honorary member of this Association, and that this Association approve the passage of the bill referred to in this address, and that the Secretary, with the permission of Judge Clayton, transmit to the Hon. James A. Reed,

accord with the general trend of modern affairs. It is generally recognized that it ought not to be so difficult or require so much of learning and experience as at present to know how to apply substantive laws to the affairs of men; also that there should not be such a great diversity of methods among the various jurisdictions.

II. We believe that the most practicable and efficient way to secure the desired end is by the formulation of rules of procedure by the courts of last resort under the authority of legislative bodies in their respective sovereignties, such rules however not invading the domain of substantive law. We recognize that it is a long and difficult road to full accomplishment but if action were taken by but a few legislative bodies the example would be of great value, would doubtless be followed in time by others and a substantial step would be taken. We think that the uniform rules of procedure so adopted should be quite general and elastic so as to be adaptable in details to local necessities and demands.

III. We perceive no sound objection to the participation of the Judicial Section in the movement, if its action and that of its individual members were temperate and not controversial, and that would naturally be so. No body of men having to do with or affected by the procedure of courts of justice are more familiar with its defects than the judiciary. That we should maintain merely an academic attitude would signify either opposition, indifference or a doubt as to the propriety of affirmative aid. By counsel, advice, expressions of views and various ways which are consistent with a judicial position, valuable assistance may be given which we think should not be withheld. August 30, 1916."

"63d Congress, 2d Session. H. R. 133 (Report No. 462). In the House of Representatives April 7, 1913. Mr. Clayton introduced the following bill, which was referred to the Committee on the Judiciary and ordered to be printed. March 27, 1914. Reported, referred to the House Calendar, and ordered to be printed. A BILL To authorize the Supreme Court to prescribe forms and rules and generally to regulate pleading, procedure, and practice on the common law side of the Federal Courts. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Supreme Court shall have the power to prescribe, from time to time and in any manner, the forms and manner of service of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice, and procedure to be used in all actions, motions, and proceedings at law of whatever nature by the district courts of the United States and the District of Columbia. Sec. 2. When and as the rules of court herein authorized shall be promulgated, all laws in conflict therewith shall be and become of no further force and effect."

This bill was re-introduced on January 5, 1916, by Mr. Webb, of North Carolina, Chairman of the Committee on the Judiciary of the H. of R.

This plan was embodied in the Act approved Sept. 17, 1915, of the Legislature of Alabama, but the statute was rendered unworkable by the provision at the end that "the Supreme Court (of Alabama) shall not have authority to change, alter or modify any act of the Legislature." Of course, "any act of the Legislature" includes all acts regulating pleadings and practice in Alabama.

It is interesting to note how Indiana has simplified the statement of the cause of action, the office and scope of demurrer and the requisites of the pleas. See Burns' Ann. Stat. Ind. (1914) Sec. 340 and other sections.

Alabama has simplified the form of the bill in equity and the matters of defence in equity cases. Code Ala. 1907, Sec. 3094 and other sections.

United States Senate, this address with the request that it be printed as part of the Congressional Record.

JUDGE DAVID H. HARRIS: I rise to a point of order. There is a motion pending before the house. Of course you understand that I am not objecting to the first part of the gentleman's motion, to express the thanks of this Association—

THE PRESIDENT: The motion of thanks and the proposition to elect Judge Clayton to honorary membership in this Association is in order.

Which portion of the motion, being put, was carried by unanimous vote.

MR. KRAUTHOFF: With respect to approving the bill, as Judge Clayton requests, is there a point of order?

SENATOR WHITLEGE: I rise to a question of parliamentary privilege—do we vote as an Association—

THE PRESIDENT: We have just stated to Judge Clayton that he is welcome and that we are glad to have him with us, and that he is a member of this Association. We haven't taken action on anything else. An announcement: The doors to the banquet hall will open promptly at 7. The banquet will be entirely informal, including the attire of the toastmaster.

MR. LAMAR: I desire to move a like expression of thanks to the gentleman from Chicago, who delivered a learned address on arbitration.

MR. J. C. JONES: I move that the gentleman be made an honorary member of the Association.

JUDGE HARRIS: I second the motion.

THE PRESIDENT: The latter suggestion will be included in the original motion.

Upon vote, the motion as amended was unanimously carried.

JUDGE JOHN T. STURGIS: There is one other matter that would take just a moment or two. I have here the report of the committee that was appointed to secure the painting of a portrait of the late Judge Fox. The portrait has been paid for and is satisfactory to the family and will be delivered to the Supreme Court and an address made by Judge Marshall at the opening of the October term of court, and the Committee asks leave to make a final report after the portrait is paid for, at the next meeting of the Bar Association.

The report follows:

St. Louis, Sept. 27, 1916.

To the President and Members of the Missouri Bar Association:

Your Special Committee appointed to procure a portrait of the late Judge Jas. D. Fox and to arrange for the presentation of the same to the Supreme Court, respectfully report that they have collected and will have available sufficient funds for the purpose, and have caused the desired portrait to be painted by Mr. Carl Waldeck, and have secured the acceptance of Judge Marshall to make the presentation address to the Court at the opening of the next October term of the Court (1916). The portrait has received the approval of the widow and family of the late Judge, and is framed in a manner so as to be a companion picture of those of Judges Gantt and Burgess, who were colleagues of the late Judge Fox. Hon. E. M. Grossman kindly consented to act as Treasurer of our Committee and has charge of the funds collected. Upon delivery of the portrait to the Court, the payment of the artist and some incidental expenses, a report will be submitted to the Association later, in due course, after the entire work for which the Committee was appointed has been concluded. Now the Committee reports satisfactory progress, and hopes at a later date to submit a further report of its completed labors.

Respectfully submitted,

SHEPARD BARCLAY,
OAK HUNTER,
JOHN T. STURGIS,
C. B. FARIS,
For the Committee.

JUDGE STURGIS: In that connection, I am reminded that another very distinguished member of the Supreme Court has lately passed away, Judge William M. Williams, of Boonville, and I move you that the incoming President appoint a committee of this Bar Association to secure funds and have painted an appropriate portrait of Judge Williams, to be presented to the Supreme Court and hung in the archives of the Supreme Court.

MR. KRAUTHOFF: Has the Association taken any steps in reference to the painting of a portrait of Judge John C. Brown?

THE PRESIDENT: It has. The committee has been appointed and it is only a question of a little while until the money will be collected, but the report is not yet ready.

MR. ROBBINS: Out of courtesy to the last speaker, I move that the rules be suspended for a moment and that the bill referred to by Judge Clayton be—

MR. JONES: A point of order—there is a motion before the house.

THE PRESIDENT: We will get to that in a moment. The pending question is on Judge Sturgis' motion and resolution.

Which motion was carried by a unanimous vote.

MR. F. N. JUDSON: I offer a resolution: "Resolved, That the Missouri State Bar Association recommends that the method of reporting opinions with the date of the submission of the cause, with the date of filing of the opinion, for many years in force in the publication of the opinions of the Supreme Court of the United States, should be extended to the publication of the opinions of the Circuit Courts of Appeal and of other Federal Courts;

"That a copy of this resolution be sent to the West Publishing Company and to all others concerned in the publication of the Federal Reports in this judicial circuit."

Motion to adopt the resolution was duly made, seconded, and carried.

MR. JOHN I. WILLIAMSON: On the first day of the meeting of this Association a report was submitted and was unanimously adopted, recommending the repeal of the primary system as relating to judges. The matter was referred to the Committee on Constitutional and Statutory Amendments with the request that they find some substitute for the primary. The Association has not had time to consider it. I move that the matter of drafting such a bill be referred to the next standing Committee on Constitutional and Statutory Amendments, with direction to report at the next meeting of the Association.

Upon second, and vote, the motion was declared carried.

JUDGE HARRIS: Gentlemen of the Association, we have approved, in a modified form in some instances, the bills that have been proposed here. I want to say just this: That if we will all get behind these, now, and when the legislature meets do what we can in an individual and personal way with the representatives of our particular localities, and let the legislature understand that we approve of these measures, as lawyers of the state, they will be put upon the statute books. The legislators want to do the thing that is best for the people. Let's get behind these measures and push. Now we have appointed a Legislative Committee, composed of the Presidents of the various Bar Associations of the state. They are expected to go to Jefferson City and explain these proposed bills to the legislative committees and in all proper ways to urge their passage. It is not proper that these gentlemen should go to Jefferson City at their own expense. I think that this Association ought to pay their railroad fare, and hotel bills, and I move that the Treasurer of this Association be authorized to pay the actual expenses of these gentlemen in presenting these bills to the legislature.

Which motion was seconded, and carried unanimously.

MR. M. O. HUDSON: I ask general consent to make a correction. In speaking of the proposal to require three years' study of applicants for admission to the bar, this morning, I made a misstatement. I stated that the proposal came from the

Board of Bar Examiners. I ask to have that stricken from the record, and I wish to move that we reconsider that whole subject. The proposal that did come from certain members of the Bar Examiners was that we should not attempt to tinker with the statute, but should get our changes by rule of Court.

THE PRESIDENT: The record will be changed.

MR. HUFF: Our Committee on amendment of the Code has not completed its work and I move that this Committee be continued for next year and all matters not passed on be referred back to that Committee.

Motion seconded, and duly carried.

MR. KRAUTHOFF: I would like to make a motion that this Association approve of the bill discussed by Judge Clayton, vesting in the Supreme Court of the United States power to make uniform the practice of law in the federal courts of the United States, and that the Secretary of this Association, with the permission of Judge Clayton, transmit to the Hon. James A. Reed, United States Senate, this address with the request that it be printed as part of the Congressional Record.

MR. JONES: I object.

MR. KRAUTHOFF: Then I withdraw the motion.

MR. JUDSON: I move that the State Bar Association express its appreciation of the very hospitable treatment of the Mercantile Club.

THE PRESIDENT: We did that this morning.

JUDGE HARRIS: I understand that a motion, this morning, was adopted thanking the St. Louis Bar Association and the various attorneys who have done so much to make our stay pleasant, and, personally, I want to say that I appreciate it more than I can say.

THE PRESIDENT: Is there further business for the consideration of this body?

It was moved, seconded and carried that the meeting be adjourned.

THE PRESIDENT: We will now, gentlemen, consider that this meeting is adjourned.

TREASURER'S REPORT.

September 28, 1916.

To the President and Members of the Missouri Bar Association:

Gentlemen:—The undersigned Treasurer of the Missouri Bar Association herewith presents his annual report and states his account with the Association, as follows:

A. Stanford Lyon, Treasurer, in account with Missouri Bar Association.

DEBIT.

November 17, 1915.	To cash, balance on hand deposited at Commerce Trust Company, Kansas City, Missouri, as received from Eugene Blodgett, retiring treasurer.....	\$1215.56
November 17, 1915.	To cash, received for sale of proceedings of 1914 meeting.....	1.11
December 10, 1915.	To cash received from George H. Daniel for sale of 1915 report.....	1.17
November 17, 1915 to September 23, 1916.	To cash, interest earned on current funds on deposit at Commerce Trust Company.	15.83
November 17, 1915 to September 23, 1916.	To cash, annual membership dues collected, both current and delinquent; and first year's dues from 36 members.....	1980.00
		<u>\$3213.67</u>

CREDIT.

November 17, 1915 to September 23, 1916.	By cash, A. Stanford Lyon for stamps for mailing statements and correspondence of the Association.....	\$ 57.36
December 22, 1915.	By cash, telephone charges incurred by Judge H. Lamm at 1915 meeting.....	3.15
December 23, 1915.	By cash, Larkin Floral Co. for flowers sent on occasion of Mr. H. C. McDougal's death.	8.00
December 29, 1915.	By cash, Eugene Blodgett mailing records to A. Stanford Lyon.....	1.31
January 21, 1916.	By cash, Frank E. Parks, printing statements.	12.00
January 21, 1916.	By cash Kutterer-Jansen Printing Co. bill incurred by former treasurer.....	3.50
February 8, 1916.	By cash, George H. Daniel postage mailing out proceedings of 1915 meeting....	74.00
March 14, 1916.	By cash, E. E. Ball overpayment of dues.	5.00
March 21, 1916.	By cash, Ruth Challinor stenographic work.	5.00
March 22, 1916.	By cash, Parks Printing Co., for envelopes and filing cards.....	14.50
April 4, 1916.	By cash, Inland Printing & Binding Co. printing proceedings of Association.....	894.91

April 4, 1916.	By cash, Office Equipment Co. envelopes, rubber stamp, etc., purchased by George H. Daniel.	\$ 5.55
April 27, 1916.	By cash, George H. Daniel postage.	12.00
May 6, 1916.	By cash, Inland Printing Co. letterheads, envelopes, application blanks.	11.00
June 19, 1916.	By cash, George H. Daniel, expenses incurred at meeting of executive committee at St. Louis.	22.28
June 19, 1916.	By cash, Senator Frank M. McDavid, expense incurred at meeting of executive committee at St. Louis.	11.00
June 19, 1916.	By cash, A. Stanford Lyon, expenses incurred at meeting of executive committee at St. Louis.	18.16
July 5, 1916.	By cash, George H. Daniel, amount advanced for telegrams.	1.02
August 3, 1916.	By cash, Bessie A. Knox, stenographic services rendered.	10.95
September 5, 1916.	By cash, George H. Daniel, express of reports of special committee on Legislation and Remedial Procedure and expenses to and from St. Louis.	75.45
September 8, 1916.	By cash, Sun Printing Co., circular letters and envelopes.	14.00
September 8, 1916.	By cash, Fulton Gazette Publishing Co., printing copies of report of special committee on Legislation and Remedial Procedure.	198.90
September 8, 1916.	By cash, Judge David H. Harris, expenses incurred as Chairman of Special Committee on Legislation and Remedial Procedure.	58.35
September 12, 1916.	By cash, George H. Daniel, postage.	33.16
September 21, 1916.	By cash, Judge Frank W. McAllister, expenses incurred at executive committee meetings.	25.00
September 21, 1916.	By cash, Ruth Challinor, stenographic services in getting out 1916 statements and assisting in preparing report.	6.00
		<u>\$1581.55</u>
September 25, 1916.	Balance on Hand.	<u>\$1632.12</u>
	Total Credit.	<u>\$3213.67</u>

The Association has no debts other than those incurred at this meeting and all bills presented to this date, with the above exception, have been paid, all of which bills receipted by the payees, are filed by the undersigned as his vouchers, together with the cancelled checks for the same.

Respectfully submitted,
A. STANFORD LYON, Treasurer.

IN MEMORIAM

WARWICK HOUGH

HENRY C. McDOUGAL

FRANK G. JOHNSON

CHARLES WILLIAM SLOAN

WILLIAM M. WILLIAMS

A. L. THOMAS

JAMES D. BARNETT

W. H. BROWN.

T. C. DUNGAN

ELIJAH H. NORTON

JOHN C. BROWN

MEMORIAL TO HONORABLE WARWICK HOUGH.

Honorable Warwick Hough, member of this court from January 1, 1875, to December 31, 1884, was born in Loudoun County, Virginia, on January 26, 1836, and died in the city of St. Louis, Missouri, October 28, 1915.

His parents removed to Missouri in 1838, and his father, George W. Hough, for many years a merchant in Jefferson City, was prominent and influential in the political controversies of the Benton and anti-Benton factions immediately preceding the outbreak of the Civil War.

Warwick Hough was reared in Jefferson City, receiving his primary and preparatory education in the schools of the city, graduating from the State University in the class of 1854. He was exceptionally distinguished in his college career, not only in his love for the classics, but in his scientific attainments, particularly in the sciences of geology and astronomy; and after his graduation he was appointed by Governor Sterling Price as Assistant State Geologist. He found time to study law, and in 1859 was admitted to the bar. In 1860 he formed a law partnership with J. Practor Knott, the Attorney-General of Missouri, which continued until January, 1861, when he was appointed Adjutant-General by Governor Claiborne F. Jackson.

Before he attained his majority he was clerk in the office of the Secretary of State, and he was secretary of the State Senate during the sessions of 1858-59, 1859-60, and during the critical and eventful sessions of 1860-61.

As Adjutant-General he issued the general order of April 22, 1861, calling the military organizations of the state into encampment; and this was the order which brought together the state troops at Camp Jackson in St. Louis, resulting in the armed conflict which began the Civil War in Missouri.

During the Civil War he adhered to the Confederate cause, serving as Adjutant-General with the rank of Brigadier-General until the death of Governor Jackson, when he was appointed Secretary of State by the Confederate Governor, Thomas C. Reynolds. He resigned this office in 1863 to enter the Confederate military service, wherein he continued through the Civil War, serving successively on the staffs of Lieutenant-General Leonides M. Polk, General Stephan D. Lee, and later on that of General Dick Taylor, with whom he surrendered at the close of the war, on May 10, 1865.

The proscriptive provisions of the Drake constitution prevented his return at once to the practice of his profession in Missouri, and until 1867 he practiced law at Memphis, Tennessee. On the abolition of the test oath for attorneys he removed to Kansas City, and soon attained a prominent position at the bar, and in November, 1874, was elected Judge of this court for a term of ten years. The constitution of 1865 was then in force, though the court had been increased from three judges to five by the amendment adopted in 1872.

While the Constitution of 1875 went into operation on November 30th of that year, it was not amended in relation to the judiciary department until after Judge Hough's term had expired; so the court remained during the entire period of his service as one court composed of five judges. The intermediate appellate system established by the Constitution of 1875 remained in effect during that period, that is, with the St. Louis Court of Appeals, including the city of St. Louis and counties of St. Louis, St. Charles, Lincoln, and Warren, with the appellate jurisdiction in the Supreme Court as defined in the Constitution.

Judge Hough was first associated during his term as judge with Judges David Wagner, H. M. Vories, T. A. Sherwood, and W. B. Napton. On the retirement of Judges Wagner and Vories, Judges John W. Henry and Elijah H. Norton succeeded; and in 1880, Judge Napton retired and was succeeded by Judge Robert D. Ray. The only survivor of the judges of this period is Judge Thomas A. Sherwood. In the last two years of this term the state made its first trial of commissioners to assist the court; and the first commissioners serving in 1883 and 1884 were Honorable John F. Philips, Alexander Martin, and Charles A. Winslow, the latter of whom on his death was succeeded by the Honorable H. Clay Ewing. Of these commissioners the only survivor is the Honorable John F. Philips. The ten year term during which Judge Hough served as judge, from January, 1875, to December, 1884, was an exceptionally interesting period in the political and judicial history of the state. In 1875 the Constitution of 1866 was still in force. The distractions of the Civil War and reconstruction period had ended with the repeal of the proscriptive legislation of that period. The Constitution of 1875, which went into force in November, 1875, with its abolition of special legislation and its restriction upon the exercise of the taxing power by counties and municipalities, reflected the public opinion of that time, but largely increased the volume of litigation and presented novel questions both of constitutional and statutory construction for the determination of the court.

The opinions of Judge Hough are found in twenty-six volumes of the Supreme Court, 58 to 83, inclusive. They rank high in judicial learning, in clearness and scholarly finish, and, as a rule, had the supreme merit of brevity. It would extend too much the limits of this memorial to view in detail these four hundred or more opinions contributed by Judge Hough during his term of office.

The judicial independence of Judge Hough and his firm stand in upholding the integrity of public obligations, were shown in his concurring with Judge Napton in dissenting from the judgment in *Webb v. Lafayette County*, 67 Mo. 353, which declared invalid the bonds issued in aid of railroads under the Township Act of 1868; also in his separate concurring opinion in *State ex rel Woodson v. Brassfield*, 67 Mo. 331; and also in *State ex rel Wilson v. Rainey*, 74 Mo. 29, in concurring in the opinion of the court delivered by Judge Norton, upholding the validity of the tax levied under a mandamus from the Federal Court for the payment of a judgment on county bonds which had been held invalid by the State Courts. These cases and opinions recall the conflict, happily ended many years since, between the State and Federal Courts in Missouri.

His opinions in the *Sharp* and *Johnston* cases, 59 Mo. 557, 76 Mo. 660, are leading cases on the law of malicious prosecution; and the law of disputed boundary established by long acquiescence, is lucidly declared in *Turner v. Baker*, 64 Mo. 218.

The statute of limitation and the proof of ancient deeds, where title is based upon Spanish land titles, was set forth in an exhaustive and scholarly opinion in *Smith v. Madison*, 67 Mo. 694.

Jurists have differed on the subject of dissenting opinions. Some think that the custom is more honored in the breach than in the observance; but it is true that dissenting opinions are at times a necessary feature in the development of the law through judicial precedent, which is the essential basis of our jurisprudence. The dissenting opinions of Judge Hough are not numerous; in fact, they are comparatively few; but it is interesting to recall that in several important cases these dissenting opinions have been declared to be the law, even after his retirement from the bench.

Thus, in *Valle v. Obenhouse*, 62 Mo. 81, it was held by a majority of the court that where a husband during coverture is a tenant by the curtesy initiate, the statute of limitation begins to run against the wife from the disseizin; and her right of action is therefore barred if she fails to sue within twenty-four years after the disseizin. Judge Hough, in his dissenting opinion, contended that the statute of limitation did not begin to run against a married woman on account of disseizing of her fee simple lands until the determination of the

tenancy of her husband by the curtesy initiate. Just before his retirement from the bench in 1884, in the case of *Campbell v. Laclede Gas Light Company*, 84 Mo. 352, three of the five judges concurred in declaring that his dissenting opinion in *Valle v. Obenhouse* stated the correct view of the law; and after Judge Hough's retirement from the bench in 1886, in *Dyer v. Witler*, 89 Mo. 81, the case of *Valle v. Obenhouse* was definitely overruled, and the view expressed by Judge Hough in his dissenting opinion was adopted as the law of the court.

In *Noell v. Gaines*, 68 Mo. 649, Judge Hough dissented in a learned opinion from the ruling of the court that where a deed of trust provided that the two promissory notes secured thereby should both become due on the failure to pay one, the demand and notice to an endorser, at the final maturity of the second note, came too late, as such demand should have been made immediately upon the declaration that the notes were due for foreclosure. Judge Hough insisted that the rule in relation to reading several co-temporaneous instruments together was not applicable to mortgages and notes secured thereby; and this view was adopted by the court several years after he left the bench in *Owens v. McKenzie*, 133 Mo. 323, so that in this case his dissenting opinion again became the law of the state.

In one of the last cases during his term, *Abbott v. Kansas City, St. Joseph & Council Bluffs R. Co.*, 83 Mo. 71, Judge Hough had the satisfaction of noting in his concurring opinion that the rule declared by him in his dissenting opinion in *Shane v. K. C. St. J. & C. B. Ry. Co.*, 71 Mo. 237, that the rule of the common law, and not the civil law, as to surface water should prevail in the state, had been adopted by the court and declared the law of the state.

The State University of Missouri conferred upon him the degree of Doctor of Laws in 1883.

On his retirement from the bench in December, 1884, he removed to the city of St. Louis and formed a partnership with John H. Overall and Frederick N. Judson, in the name of Hough, Overall & Judson, which continued until December, 1889. Thereafter he associated with his son, Warwick M. Hough.

In November, 1900, he was elected to the Circuit bench of the city of St. Louis, and served with eminent distinction for the full term of six years. It is interesting to note that his associate on the Supreme bench, John W. Henry, in like manner served in the Circuit Court of Jackson County for several years after his retirement. After the expiration of this term Judge Hough was again associated with his son, Warwick M. Hough,—for a time also with Ex-Judge Jacob Klein until the latter's death—and in this association he continued until his death, on October 28, 1915. Judge Hough was mar-

ried in 1861 to Nina E. Massey, daughter of the Honorable Benjamin F. Massey, then Secretary of State, and she survived him with five children born of the marriage, two sons and three daughters. The elder son, Warwick M. Hough, is now practicing in St. Louis and is a well known and successful member of the bar of this court.

Politically Judge Hough always adhered to the views which he inherited as to the nature and limited powers of the Federal government and the reserve rights of the states, and always affiliated with the Democratic party. He was widely known to the Masonic Fraternity as a thirty-second degree Scottish Rite Mason.

Memorializing this distinguished public career of Judge Hough, we can only briefly allude to the exceptionally interesting personality of the man. His dignified courtesy and native independence of character, with his wide range of reading and unusual combination of literary and scientific taste, gave him a rare personal charm; and his interesting and varied experience in life, and broad human sympathetic philosophy of life made him always welcome in cultured and refined circles, and endeared him to those who were privileged to enjoy an intimate association.

Judge Hough was fortunate in preserving to the last the appreciative enjoyment of those literary and cultured tastes which had distinguished him through life. He was still more fortunate in having to the end of life the ministrations of the wife of his youth and of his children, and "all that should accompany old age—love, honor, obedience, and troops of friends."

As to the closing scene of the drama of this eventful life, we quote the eloquent words of Judge Hough in presenting in the United States Court, a few years since, a memorial on a deceased brother of the bar:

"He has entered upon the impenetrable mystery of the great Unknown, athwart whose vast expanse the feeble taper of earthly wisdom sheds no light, and in whose depths the plummet of the profoundest philosophy finds no resting-place, and in the contemplation of which, the anxious soul finds no consolation, or relief, save in the Rainbow of Hope, cast upon the sky of the future, by the Sun of Righteousness, shining through our tears."

Requiescat in pace.

FREDERICK N. JUDSON,
WILLIAM M. WILLIAMS,
CHARLES W. BATES,
Committee of the State Bar Association.

MEMORIAL ADDRESS UPON JUDGE HENRY C. McDOUGAL,
BY CLARENCE S. PALMER.

"And how did he live, that dead man there,
In the country churchyard laid?
O, he? He came for the sweet field air.
He ruled no serfs and knew no pride;
He was one with the workers side by side.
For the youth he mourned with an endless pity
Who were cast like snow on the streets of the city.
He was weak, maybe, but he lost no friend;
Who loved him once, loved on to the end.
He mourned all selfish and shrewd endeavor;
But he never injured a weak one—never.
When censure was passed, he was kindly dumb;
He was never so wise but a fault would come;
He was never so old that he failed to enjoy
The games and the dreams he had loved when a boy.
He erred, and was sorry; but never drew
A trusting heart from the pure and true;
When friends look back from the years to be,
God grant they may say such things of me."

With these words, in 1904, Judge McDougal closed a memorial address to this Association upon the life of his former partner, Col. J. H. Shanklin, of Trenton, and, today, they are deserved by him who then used them.

Henry Clay McDougal was born December 9, 1844, on Dunkard Mill Run, in Marion County, West Virginia, then a part of the Old Dominion. He was reared on the farm and, in his own language:

"The little log school house at Bethel, just across the hill from home, served as his kindergarten, common school, college and university."

In July, 1861, after an older brother had joined the Confederate Army, our friend enlisted in the Sixth Virginia Volunteer Infantry (Union). During the last of his three-year enlistment, he served as Chief Clerk of his brigade and, when mustered out, in August, 1864, he was made Chief Transportation Clerk in the United States Quartermaster's Department, first at Gallipolis, Ohio, afterward at Indianapolis, Indiana; in the meantime, being for a while the Special Agent at Cincinnati, of General Meigs, then Quartermaster General. He left the public service in March, 1866, and after visiting relatives in and about Washington and Alexandria for a few months, first came west to visit the family of his father, who had moved to Bancroft, Daviess County, in this state. He reached Bancroft October

25, 1866. The young man then intended to visit for a few days and return to the East; but the lure of the Grand River country captured him and he decided to remain and become a lawyer. He was admitted to the bar in November, 1868, and practiced at Gallatin until about 1885, when he removed to Kansas City, where he lived until his death, which occurred at Los Angeles, California, December 17, 1915.

In 1869 Judge McDougal married Miss Emma F. Chapdu, of Gallipolis, Ohio, who survived him until August, when she passed away. To her and to the three surviving children and his three grandchildren, Judge McDougal was the loving comrade until the end.

During the last ten years of his residence in Gallatin, Judge McDougal was the junior member of the firm of Shanklin, Low and McDougal, who had offices both at Trenton and Gallatin. This firm were the attorneys for the Rock Island and the Wabash railways in northwest Missouri, and were among the best known lawyers in the state. It has been stated that, for a period, this firm had more cases in the Supreme Court than any other in the state, and with a large percentage of favorable decisions.

In 1885 the old firm was dissolved. Judge McDougal came to Kansas City. Colonel Shanklin, who was president of a bank, dropped out of active practice, and Mr. Low, the famous silent man, went to Topeka as general attorney of the Rock Island Railway Company for its lines west of the Missouri River. In Kansas City Judge McDougal was, at different periods, in partnership with Governor Crittenden and E. H. Stiles, with Judge Elijah Robinson, with Ashley M. Gould, now Chief Justice of the Supreme Court of the District of Columbia, and with Frank P. Seabee.

Judge McDougal held with honor several official positions. He was Judge of the Probate Court of Daviess County. He served with distinction as City Counsellor of Kansas City for two years. He was appointed by his old friend and neighbor, Governor Dockery, a member of the Missouri World's Fair Commission, and, later, a member of the Board of Election Commissioners of Kansas City.

Notwithstanding the fact that a log school house was his university, Judge McDougal was an exceedingly well read lawyer. In his early days in the profession he must have been a zealous student to have been so well grounded in the great fundamental principles of the law as he was when I came to know him. Then, too, his practice, for more than fifteen years, in a country circuit, where the range of questions involved is wider than that presented to most city lawyers, gave him a breadth of vision which is often lacking the more specialized practitioner. In his day

there was much litigation about land titles and he was well versed in this, for many of us, almost forgotten branch of the law.

Judge McDougal was quick to see the right thing to do and ready to assume the responsibility for action.

This quality was rather dramatically illustrated in closing up the long litigation between Kansas City and the National Water Works Company. Before Judge McDougal became City Counsellor, a decree had been rendered by the United States Circuit Court providing that, upon the payment of the sum of three million, one hundred thousand dollars, Kansas City should become the owner of the property of the company, in Missouri, with a supply station and flow line in Kansas. The city had voted the bonds, but the Water Works Company declared the bonds were invalid, because exceeding the five per cent debt limit, while the city contended that, as the contract with the company, containing a purchase clause under which the decree was rendered, antedated the constitutional limitation, the bonds were valid. Some eastern capitalists, represented by such eminent lawyers as William B. Hornblower and Wheeler H. Peckham, of New York, and Moorfield Storey, of Boston, made a proposition to purchase the bonds; but insisted that a suit to test their validity should be brought and carried to judgment. This was done in the Circuit Court. Then these lawyers insisted that an appeal should be taken to the Supreme Court. I saw the reply which Judge McDougal sent to this suggestion. It stated, very briefly, that the city had fully complied with the conditions as it understood them, and that it would feel free to dispose of the bonds to any other purchaser.

Soon afterward the National Water Works Company, realizing that the game was nearly up, intimated that it might accept the city's bonds in payment of the purchase price for the property, if a decree to that effect should be entered by Mr. Justice Brewer in the suit in the Federal Court. The attorneys of the company were satisfied that the rights of the holders of the bonds could be so protected by such a decree that neither the city, nor any insurgent, could ever question the validity of the bonds, and they were willing to pay a slightly greater premium than had been offered by the eastern customers. Instead of peddling this matter about town and taking it up with the members of the city council, Judge McDougal at once assumed responsibility for action. Taking with him Frank Hagerman, who had been one of the counsel for the city in the litigation, he left town. At the Counsellor's office none of us knew where or why he had gone. I think his own family did not know. Probably the Mayor and John C. Gage, one of the city's attorneys in the litigation and then a member of the board of public works, were the only persons in the city who knew of the errand. A few days later, the morning papers announced that a council meeting was called to meet at ten o'clock that day. When the council assembled the result of Judge

McDougal's absence was announced. An agreement had been reached with the National Water Works Company. Counsel for the city and for the company had gone to the summer residence of Mr. Justice Brewer and he had signed the necessary decrees. All that was needed was the action of the city council in passing the proper ordinance. Because the completed concrete proposition was presented and the goal struggled for for years was at hand, the ordinance was passed and signed. The city's bonds were deposited with the Clerk of the Circuit Court of the United States and, at one o'clock on the afternoon of that day, the accounts of the Water Works were running in favor of the city.

Judge McDougal was a man of courage. He was a brave soldier and the quality remained with him during life.

In his early practice there was an interesting example of his fearlessness. In 1870 he brought suit, by attachment, in the old Common Pleas Court of Daviess County, against Jesse James and Frank James. In December of the previous year, two men robbed the bank at Gallatin and killed the cashier. The pursuit was so prompt and vigorous that the race-horse ridden by one of them got away, and both made their escape on one horse. A little out of town they overtook a farmer riding homeward and took his horse. This stolen horse was recognized down in Clay County, but the men were not captured.

Meantime the race-horse, saddle and bridle, were in the livery stable at Gallatin. The owner of the stolen horse came to young McDougal to bring suit and levy an attachment upon this property. Without hesitation he did so. He admits that he did not know, until afterward, that his client had tried to get some older lawyers to bring the suit, but they had declined for prudential reasons. The defendants appeared by counsel and answered. While the suit was pending, young McDougal was informed that Jesse James had sworn to kill him on sight for his impudence in bringing suit. After the case was continued once or twice, McDougal announced ready for trial. The answer was withdrawn, judgment taken and the property sold. The facts which would have been brought out on the trial in the civil case would have been embarrassing in another forum. Some years later, while sitting in the smoking car of a train just pulling out of Kearney, a pistol shot through the window at which Judge McDougal was sitting, gave some indication that the old threat had not been forgotten.

Judge McDougal had the saving grace of humor. He did not take himself or others too seriously. I well remember a city officer who was faithful and careful, but who was impressed with the greatness of his responsibility and was inclined to tell others about his official burdens. He came into the office one day, when Judge McDougal was City Counsellor, and, in his nervous way, walked around the room in a circle and grumbled about his official cares. The Judge, working at his desk,

let the man run down and then said simply, "Mr. Blank, you and I have one means of relief. We can resign." I think the Judge never again heard a complaint from his fellow officer.

None recognized more clearly than Judge McDougal that the law is a jealous mistress, but he would not allow her to absorb his whole life. He took too great an interest in all the life of mankind to be satisfied only with studying the development and the administration of the law. He was a great lover of history, especially the history of his country, with emphasis on that of Missouri. He liked to dig out the curious and overlooked facts, as well as the common facts known by all who are well informed. In his articles written for the Missouri Historical Society, and in other written addresses, he has shown this fondness for the real acts of the men and women of their days. To him the great names in our history did not stand for steel engravings, but for real men and women, who had their faults as well as their great qualities, and their weakness as well as their strength. He loved history and music. Not the kind which required a commentary in explanation, but the simple straightforward kind which speaks straight to heart and mind.

But our friend was fond not merely of books. He liked just plain folks, whether they were distinguished or unknown, rich or poor. No other man, I ever knew well, had so wide an acquaintance with men and women of prominence in public and private life. He was personally acquainted with all the Presidents from Johnson to Taft, and it is characteristic of his fairness that, although always a staunch Republican, his sketch of President Cleveland, in his recollections, is longer than that of any other President whom he knew, and it is one of the most eulogistic. He also knew many of the leading members of both houses of Congress, during the past fifty years, also Judges of the Supreme Court of the United States, and many subordinate courts. He was acquainted with many of the prominent leaders of the Armies of the North and the South, and his tribute to General Joe Shelby showed his chivalry and his love for the man against whose cause he had borne a musket.

In 1908, Judge McDougal's health was greatly impaired by hard work in a case involving some Indian titles, and, after that, he gave little attention to the law. He still kept his office in the New York Life Building and, during the last six years of his life, it was my privilege to occupy the adjoining rooms in the suite. Here he enjoyed the pleasure of meeting his old friends who frequently came in to see him, and he bound to him by the closest ties of affection, not only such men as Col. Van Horn, Judge Phillips, Mr. Tichenor and Mr. Gage, but the man in the humblest ranks of life, the young people, and even children, who came to know him.

During 1909 and 1910, at the request of his family and some of his friends, and also because he enjoyed the work, he wrote his Recolle-

tions. The book was published in 1911. Judge McDougal greatly appreciated the comment in a review of the book in a Boston newspaper "that reading the book was like sitting on the veranda, in the cool shade of a pleasant afternoon, in conversation with the author." The comment showed true insight. The book is without any special plan, is written to point no moral; it simply preserves the recollection of persons and events which, at the time of their writing, the Judge thought might be of interest to others. I know of no book I ever read which brings before me so vividly the personality of the author. The book gives delightful pictures of many of the old lawyers of this state and of West Virginia, and is a frank eulogy of many of Judge McDougal's most cherished friends.

Judge McDougal was a most kindly man. He saw the best in every one. He did not go through the world blindfolded; he saw the foibles of men, but his judgment of them was so kindly that there was no bitterness. I think there was no person in the world who had not his best wishes.

He loved association with his brethren of the bar. In the introduction to his Recollections he says:

"But as life's game is closing, I look back now with no little pleasure and some pride upon these incidents: I was born and reared on a farm; served as a soldier in the Union Army, and my professional brethren unanimously chose me as President of the Missouri Bar Association."

While Judge McDougal loved his native state, Virginia, the mother of Presidents, and was ever fond of the new West Virginia which included his birthplace, and while he frequently went back and enjoyed the companionship of old friends, it was Missouri that held his heart.

His love for the West was brought to my mind by the fact that, after his death, I found upon his desk some typewritten copies of the following verses. Their sympathetic view of the West, which he loved, had caught his fancy, and he had evidently prepared copies to give to friends who might appreciate them.

"WHERE THE WEST BEGINS.

Out where a handclasp's a little stronger,
 Out where a smile dwells a little longer,
 That's where the West begins.
 Out where the sun's a little brighter,
 Where the snow that falls is a trifle whiter,
 Where the bonds of home are a wee bit tighter,
 That's where the West begins.

Out where the skies are a trifle bluer,
Out where friendship's a little truer,
That's where the West begins.
Out where a fresher breeze is blowing,
Where there is laughter in every streamlet flowing,
Where there's more of reaping and less of sowing,
That's where the West begins.

Out where the world is in the making,
Where fewer hearts with despair are aching,
That's where the West begins.
Where there is more of singing and less of sighing,
Where there is more of giving and less of buying,
And a man makes friends without half trying,
That's where the West begins."

During the summer of 1915 Judge McDougal's health began to fail. In spite of the care of physicians and of the family, he grew weaker. For weeks he came to the office a little while in the morning; then his visits ceased. He was confined to the house; then to his bed. Feeling life slipping away, the old soldier instinct came back to him. He had a brother, a physician on the Pacific coast. He thought that the mild climate of southern California, and the treatment of his brother, might give relief. He felt that it was the last chance, and, against the advice of physicians, of friends, of family, he, all alone, decided to take the chance. For several days before he went away he had been in bed. He arose, shaved and dressed himself, and I saw him come down the staircase, alone, wasted to a shadow, every movement mechanical, with feeble steps, and yet, by the sheer force of his will, he held himself erect, with that soldierly bearing which all who knew him remember so well. Refusing proffered assistance, he walked across the room, alone, signed some papers which he wished to execute, and then, regretful at leaving his home of more than thirty years, sorrowful at parting from those whom he loved, he went out a soldier unafraid.

MEMORIAL ADDRESS UPON JUDGE FRANK G. JOHNSON.

BY E. E. YATES.

On May 12, 1916, there passed away at Kansas City, Mo., one of the best known and loved members of the Kansas City Bar, Judge Frank G. Johnson. Judge Johnson was born in West Boylston, Mass., on the 18th day of December, 1851. The forebears of his family were English, its founder having emigrated from England to Massachusetts in 1640.

He was admitted to the bar at Towanda, Pa., in 1883; removed to Kansas City in 1884, when he at once became connected with the bar of Jackson County, of which he was continuously an honored member until the day of his death. He was appointed first assistant prosecuting attorney for Jackson County, under the administration of Marcy K. Brown and served successively in the same capacity under James A. Reed, Edward E. Yates and Herbert S. Hadley. During his professional career he was elected and honorably served one term as police judge of Kansas City, and was also associate city counselor for a considerable period.

At a later time he was connected with the legal department of the Street Railway Company at Kansas City, and as a trial lawyer for that company filled the position with marked ability. In 1912 Judge Johnson was elected judge of division number five of the Circuit Court of Jackson County and served in this capacity until the time of his death. Judge Johnson was married in 1876 to Miss Cora M. Moore. Throughout a busy lifetime Judge Johnson displayed the most conspicuous ability in every public position to which he was called, and at the bar ever stood for high ideals and correct practices. He was a very able lawyer, a man of kindly instincts, generous impulses and very human qualities. His example in every phase of his life work will long serve as an example and inspiration to his associates in professional life.

ED. E. YATES.

MEMORIAL ADDRESS UPON JUDGE CHARLES WILLIAM SLOAN.

BY A. A. WHITSETT.

Judge Charles William Sloan, a charter member of the State Bar Association, died suddenly at his family residence in Harrisonville, Cass County, Missouri, on Wednesday evening, May 17, 1916, in the seventy-fourth year of his age.

The news of his death came as a sudden shock to his many friends; his last illness was of but a day's duration, and no one was prepared to hear that this most beloved man had ceased to be.

I became acquainted with him while he was in the practice of the law at Harrisonville, where he pursued his profession from the close of the Civil War continuously to the time of his death.

He began in partnership with Col. R. O. Boggess; the firm name was Boggess & Sloan; he was the younger member of the firm, and they did a large practice, both in and outside their county. After several years Col. Boggess moved to Kansas City.

Judge Sloan never had another partner, but continued the practice always in the trial courts; he never had any side lines.

I knew his father's family before I knew Judge Sloan; his father and my father joined farms in Cass County, not over seven miles from Harrisonville, but Judge Sloan was away from the home. I came to know him first as a lawyer.

He was a son of the well-known Rev. Robert Sloan, who did more to establish the Cumberland Presbyterian Church in Missouri than any other person.

I also knew Judge Sloan's mother, Aunt Margaret Sloan; she was a daughter of Rev. Finis Ewing, who was one of the founders of the Cumberland Presbyterian Church in the state of Tennessee about the year 1810.

The names and the works of these eminent divines are no doubt familiar to you all; they form part of the church history of the country.

These were people of the highest attainments, of the strongest characters and deepest piety.

Judge Sloan was raised by and surrounded with the greatest Christian characters that I ever knew.

I was frequently in the home of Rev. Robert Sloan as a boy on the farm before my college days began.

I never was in a home where all were made to feel more earnest, genuine hospitality than in the old Sloan home; it was indeed good will and good cheer, and Christian devotion; if Rev. Sloan was not present to offer thanks before partaking of the meal prepared, or of offering prayer before retiring for the night, Aunt Margaret Sloan always gave thanks and offered the evening prayer; she was a woman of remarkable strength of character, a zealous Christian, and her influence was felt far and wide.

I have said this much that you may know the influences surrounding the early life and the rearing of Judge Sloan.

Later, when I presented myself for admission to practice law and received my license, Judge Sloan was one of the examining committee.

Judge Sloan was an ideal lawyer and loved his profession; he was diligent and attentive always; nothing went by chance; he looked after the detail with the utmost care, as all good lawyers must.

He was progressive, he was studious, a hard worker; he grew in knowledge, and his reputation increased as a lawyer, even up to the close of his long and useful life.

He was at the very moment of his taking away, which came suddenly and without warning, busily engaged in the trial of cases, court being at the time in session. He had just finished in the trial

of an important case and was busily preparing for another when the grim messenger of Death closed forever his life's work.

His standing was high as a lawyer in this state, in this Missouri Bar Association, and in the community in which he lived.

He never misrepresented or deceived; he was logical and clear minded, deep and analytical; he went at once to the very core of the subject matter under consideration; he never wasted any time in non-essentials; the vital points which were to control the case were soon found and analyzed.

He was no pretender, no sycophant; he could not be other than honest and earnest, was bold and aggressive.

He reached a place in his profession in this state where it is not flattery to say he was one of the most thorough and best informed practitioners in this state.

At the time of his beginning in the legal profession, about the year 1865, there were probably 36 volumes of the Missouri Reports out; now there are 266 volumes Missouri Reports and 193 volumes of Missouri Appeals Reports, hence the opinions reported since he began are about 423 volumes. His name as lawyer or judge appears in a great many of these volumes; they contain a large part of his life's work as a lawyer; and through these volumes he will continue to live in the history of this state as one of the pioneers who has done much in the formation and progress of our legal jurisprudence.

His labors as a lawyer are not the only part of his life deserving notice; he was a man of many estimable qualities.

He left a wife, Jennie Todd Sloan; she was a daughter of Robert Todd, formerly of Fayette County, Kentucky, near Lexington, but later of Cass County, Missouri. The Todd home, where Judge and Mrs. Sloan were married, and the old Sloan home were only a few miles apart. Mrs. Sloan resides at their beautiful home at Harrisonville. Two children survive him, Mrs. Florence Sloan Vaughn, living in Nashville, Tennessee, and Miss Helen Todd Sloan, living at Harrisonville. His home life was always of the happiest and most cheerful character.

If the correct estimate of a man must be made in dollars and cents, then my friend Sloan does not rank high in the scale of greatness; he gave too much of his time and substance to others, to the poor, the needy, and the distressed, to accumulate great riches; but if to be great is to be good, and if we judge a man by the true standard—the good he has done to humanity—then my friend has left a priceless heritage indeed. He was under all circumstances courteous; he was of the old school; he would never wantonly offend, but if his honor was assailed he was quick to resent.

As a child he began an active Christian life at his mother's knee, and became a member of the church of his fathers; as a church member never did he lag or tire; he became an officer and pillar in the church at an early age.

When the proposition was made to unite the two branches of the Presbyterian Church he was summoned to Nashville, Tennessee, to address the General Assembly in session at that place, and being a son and a grandson of the founders of the Cumberland Church, and in his address to that body, recognizing the advantage and necessity of the proposed union, he laid aside all pride of ancestry and took a determined stand favoring the union; and it was at this time and at this meeting the first steps were taken toward the union that was afterward consummated.

He was a member of the church for more than fifty years; he was a regular attendant at church and was the most zealous member in the church at all times, and attended its meetings by day and by night, and was a regular attendant at the Sunday Schools and the prayer meetings. He gave much of his time and means to the church and Sunday Schools.

I never knew him to use language that was unbecoming to the professing Christian; always an officer in the church and a teacher in the Sunday School.

He was a Knight Templar in Free Masonry and was zealous and faithful in the work and in his attendance at the meetings.

As a judge upon the bench he was punctual, attentive and capable.

Whether as a judge, a lawyer, a citizen, or church man, he excelled, it was impossible to determine, as he was ever true, capable and successful in all of these.

In all this busy life he found time for his social duties; he loved to visit with and meet his friends, and to have them visit him; he enjoyed life; he was the best company; was agreeable and entertaining; he delighted in winning his case for his client, but was never offensive to his opponent; he was humorous and enjoyed humorous jokes.

Such was the life of this man of many duties and much accomplishment; he was a hard fighter, a happy winner, a good loser. I repeat it again, under all circumstances he was the most courteous man whom I ever knew. I never heard a lawyer or other person say Judge Sloan had acted dishonorably with him. He was by nature, by education and training, and by life-long practice, honest to the core, truthful to the last.

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He has left behind him a life well spent, and his influence is not gone; it will continue to be felt; and this influence deserves more than a passing mention; it is all for the good. His entire life is an example well worth study and emulation; he has reflected honor and given reputation to the bench and the bar of this state, and to every association with which he has been connected. His church, in which he was such an active, vital force, will miss him. The children in the Sunday School will miss him. This Missouri Bar Association will miss him; he will be missed everywhere. We might say of him: His life was gentle and the elements so mixed in him that Nature might stand up and say to all the world, "This was a man." He was indeed gentle and true in his nature, a most charming and useful man; truly has it been said, By their works shall ye know them.

"Honor and shame from no conditions rise,
Do well your part, there all the honor lies."

With all these arduous duties faithfully performed, Judge Sloan smiled through it all; I cannot think of him except as with an agreeable, pleasing look, a smile that would not come off.

His faults, if he had any, are written in sand; his many virtues are inscribed upon the solid rock and in the hearts of all his friends and loved ones.

But he has left us; his frail body was worn out. Death came quietly, peaceably. He entered the great Beyond a gentleman unafraid, for he had so lived that he could "Approach the grave like one who wraps the drapery of his couch about him and lies down to pleasant dreams."

A. A. WHITSITT.

Harrisonville, Mo.

MEMORIAL ADDRESS UPON JUDGE W. M. WILLIAMS.

BY C. D. CORUM, ST. LOUIS.

On yesterday, when I received a letter inviting me to make this address, so many of Judge Williams' good traits of character began trooping through my brain that my thought became involved and I was at a loss to know where to begin.

I attended his funeral ceremonies at Boonville and listened to an able sermon by one who had long been his pastor; to an address, covering the crowning achievements of his life, by one who had known him intimately

for more than fifty years; and I heard delivered over his funeral bier a prayer which I considered the ablest and most suitable funeral prayer I had ever heard. These men were familiar with his public and private life. Some of them knew him when he was a very young man, struggling hard to establish himself in the profession which he loved and in which he had chosen to fight life's battles. One of them had the good fortune to perform the ceremony where he pledged his troth to her who today, in widow's weeds, disconsolately mourns his death, and who, for a period of about fifty years, has been his sympathetic, encouraging and capable companion. These men did not, perhaps, know Judge Williams better than I, but they knew him at an earlier period of his life and were, therefore, enabled to recount some of his estimable characteristics of which I had no personal knowledge. These addresses were filled with references to his Christian character; his love for his family and his friends; his fidelity to his vocation; his high conception of the responsibilities and duties of husband, father and citizen. The addresses delivered in that cozy church in that small town on that autumnal afternoon were filled with eulogy and praise, but they contained none of the elements of fulsome flattery so often heard in such orations.

Now I am summarizing these funeral ceremonies in this brief way for this reason:

One's lifetime neighbors know him best. "Neighbor" and "country-side" and "small town" seem synonymous to me. I sometimes wonder if we who live amid the bustle and turmoil of the cities really have any neighbors, and whether we really are neighborly. But in the country town people stand in close touch with each other—and sometimes against each other. They are quick to recognize failure, and as equally quick to recognize successful achievement; alert to detect human frailty and sophistry, and equally as alert to observe and applaud efficiency and honorable dealing. He who lives in the small town may rest assured that the home folks know. Judge Williams' home folks knew. By constant touch with him socially, politically and in a business way, and by reason of their active intuition, they were enabled to make an accurate appraisal of the man. And in that little church on that balmy, fitful afternoon hundreds of Judge Williams' neighbors sat with bowed heads and heavy hearts listening to the things that were said about him. There sat old men and old women who had known him when he was a babe in swaddling clothes. There were others, somewhat younger than those last above referred to, but on whose features age had begun to stamp its unerring symbols, who had romped with Judge Williams over the hills which hang about Boonville like fortresses of protection, when he was a barefoot boy. There were still others in that congregation who had sat with Judge Williams in counsels of church and state; men and women who had consulted him relative to their property rights, their

liberty sometimes, and upon matters of the most personal and sacred nature. There they were—these neighbors—men and women of almost every vocation and station in life, listening to the encomiums that fell from the lips of these learned men. These men and these women knew Judge Williams better than anyone could know him who did not come closely in contact with him in his daily life. These people were competent to pass impartial judgment on the truthfulness of these panegyrics, and they did pass judgment. I know that I am not guilty of recklessness of statement when I say that every man and every woman in that large concourse endorsed all that was said. I talked with some of them afterwards, and after expressing their appreciation of the character of these funeral orations, several of them said to me: "And the good part about it was that it was all true, and Judge Williams was worthy of every good thing that could be said of any man." And so I say to you, my brethren of the bar, that the greatest tribute that was paid to Judge Williams on that day was not by the men who spoke aloud, but by those who listened, and while listening, approved.

Now I might devote hours to a discussion of Judge Williams' career as a lawyer, his loyalty to his family and his friends, and the precedent of right living which he set by his daily walk and dealings in life. Indeed, his life was a living sermon of uprightness and of right living. But I shall not go fully into these things, and yet may I be pardoned by detaining this distinguished audience long enough to say that there comes to my mind at this moment three things which particularly distinguish Judge Williams from most other men whom it has been my good fortune to meet.

First: He had the ability of getting to the very heart of a law suit quicker than any man I have ever had the privilege of being associated with. Now I do not mean by this to imply that it came natural to him to do that. I don't think there are any natural born lawyers. He who relies on his natural attainments need not expect to achieve in the law. Judge Williams' life was an exemplification of the aphorism that "there is no excellence without great labor." Let it not be thought that Judge Williams attained his eminence as a lawyer by reason of some inherent force that gave him power to grasp without the application of the usual methods. Nature, 'tis true, endowed him with a brilliant intellect. But he did not reach the pinnacle of fame in his profession without arduous and unrelenting industry. His genius for toil was wonderful to see, and he had a method of dispatching his work which was peculiarly his own.

Second: His work, like that of most lawyers, was at all times arduous and sometimes annoying, yet I have never known a time that Judge Williams would not readily turn from his work to greet an acquaintance or a friend with a smile upon his lips and a kindly light in his eyes. Many men—most men—grow petulant when the duties of an

active legal career crowd heavily upon them. But not so with him. In the midst of the most harassing litigation he was always urbane and bright and ready to greet with an encouraging word and a welcoming smile.

Third: I have often wondered if there was ever another lawyer who lived all his life in the hamlet of his birth, far removed from great commercial activities and transactions, around which lucrative law business hovers, who achieved the success at the bar, financially and otherwise, that he achieved. I don't know of another. Do you?

These services and kindred services are not necessary to perpetuate the life and memory of Judge Williams, but they may serve to stimulate those of us who are here and those who come after to more exalted views of our duties as lawyers and as citizens. So far as his memory is concerned, it will live in the hearts of his countrymen long after the pages on which these memorials are inscribed have turned to dust. Judge Williams needs no monument of stone or marble on which his life's work may be inscribed. He builded his own monument by his daily deeds. If you would know more of his fidelity to his church, seek the members of the congregation where he worshipped a lifetime. If you are not already acquainted with his fealty to the state and of his high ideals of the duties of citizenship, inquire of any of the many administrations of this state which have sought and received his gratuitous and invaluable counsel. If you would know more of his attainments as a lawyer, ask some lawyer about it who has been arraigned against him or associated with him in the handling of important matters. If you desire higher authority as to his legal ability, inquire of the men who grace and have graced the bench of this and other states, and who have sat in judgment upon his arguments and his briefs. Judge Williams, by the life he lived, not only carved out his own fortune, but his own monument. Christopher Wren, I read, was one of the greatest architects of the Old World. Perfection of his art seems to have been attained when he designed and constructed St. Paul's Cathedral at London. There is, I am told, an inscription in that building which refers to Wren, and then, by way of attracting attention to the grandeur of the building and the unsurpassed genius of the man, says: "If you inquire for his monument, look around you." And so I say to you, my brethren of the bar, if you inquire where Judge Williams' monument can be found, I suggest that you look about you. Look first, if you please, to the reports of this state, wherein are recorded his legal opinions, and where his character as a humane, impartial and able jurist is chiseled in and between the lines. Look through the records of the many courts of this state, trial and appellate, where his ability and skill as a practitioner and an advocate can readily be seen in the files of the proceedings in which he took part. And then reflect on his private life and personality. You will then, I know, agree with me when I say that

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through the activities of his business and professional life he established for himself a monument as lasting as the history of our great state. The impress of his life upon his intimate associates and his family will endure and make itself felt long after monuments of stone have crumbled and pages of history have turned to dust. These, in brief, are the heritages which Judge Williams bequeathed to posterity, and they bear a lasting tribute to the excellence of this unusually great man.

MEMORIAL ADDRESS UPON A. L. THOMAS.

BY THOMAS HACKNEY.

Abner Llewellyn Thomas was born October 9, 1844, on a farm in Grant county, Wisconsin, and died in Carthage, Mo., May 11, 1916.

His parents were Welsh. Shortly after their marriage they came to the new world, so full of promise, and, settling on a farm in the rich section of Southwestern Wisconsin, builded their home, where the subject of this address was born and reared to manhood's estate.

Passing through the common public schools of the vicinage he attended Platteville College for a time and then entered the State University at Madison. The Civil War came on very soon thereafter and, like thousands of other farmer boys, he enlisted as a soldier and became a member of the celebrated Iron Brigade commanded by that intrepid soldier, General Bragg. He saw much of his military service, however, in the lowlands of the Mississippi about Memphis. He often remarked that while he was familiar with shot and shell and the din and smoke of battle, yet his worst battles were fought individually in bog and swamp with mosquitoes and pestilential fevers.

At the close of the Civil War he re-entered the Wisconsin University, remaining there as long as his scanty means would permit and then continued and completed his law studies in a law office in Madison.

While struggling to obtain sufficient money to complete his education, he was persuaded by a friend to undertake selling life insurance during the summer vacation. The handsome premiums and commissions promised attracted his hunger for money, so he got an agent's outfit, hired a horse and buggy and started forth to sell every adult in Wisconsin a life insurance policy. After two weeks' hard work with heavy expense and not a single policy sold, he became discouraged, resigned his agency, returned his agent's outfit of blanks and alluring literature, and wrote this typical letter to the company:

"I have quit my job. It is no good. I have found out in two weeks that the people of this state prefer a dollar while they are alive to a million after they are dead."

Soon after his admission to the Wisconsin bar at Madison he turned his attention to the new Southwest and in 1869 came to Carthage, Mo., where he found an attractive, growing community filling rapidly with young men from every part of the Union, the very flower and prime of their native states. This atmosphere was congenial and attractive to him so, purchasing a copy of the General Statutes of 1865 and a handful of text-books—all that his scanty means would permit—he boldly hung out his shingle and began the active practice of law, which he kept up without cessation until a few days prior to his death.

In his make-up there was an abundant supply of vim, vigor and vitality. Naturally these qualities soon brought him into local prominence. Soon the contest came on in Missouri for the enfranchisement of the ex-Confederates. Gallant soldier that he was in war, he was generous to a fallen foe. Hence he espoused the cause of the weak against the rapacity of the strong, and being then a Republican in politics, he allied himself with the Liberal Republicans, and by natural process of political evolution became in due time a Democrat, which he ever afterwards remained.

A vacancy occurring in the office of circuit attorney of his circuit during the administration of his friend, Governor B. Gratz Brown, he was appointed to that office and held that position until the abolition by the Legislature of the office of circuit attorney in the rural districts of Missouri. He was later elected prosecuting attorney of his county and held that office for one term, declining re-election. He was not again a candidate for public office until 1884, when he was the Democratic nominee for Congress in the southwestern district, but by fusion of Republicans and Greenbackers was defeated at the polls by a small majority.

It was not as soldier or politician that he shone best, though he was a brave and intrepid soldier and a faithful, fighting Democrat; but it was as a lawyer among lawyers. One dominant trait of his whole professional life was his desire and readiness to help some fellow-lawyer—preferably the younger ones—out of a close place. No lawyer, old or young, ever found him too busy to stop and give a suggestion of a favorable point or the citation of some appropriate authority on a knotty question—so satisfying and helpful in the heat of trial or after temporary defeat.

He truly loved the law for the law's sake. His mind was keen and analytical. I have never seen his equal in sizing up and putting his finger on the weak spot of his adversary's case, while appreciating the strong and controlling points of his own.

In his earlier days at the bar he gave much attention to the criminal practice, and achieved prominence in that field. However, after the formation of our partnership the criminal practice became distasteful to me and I persuaded him to give exclusive attention to the civil practice.

Yet he never did lose his taste for the greater excitement of the criminal trial, and once in a great while would accept a retainer in an important criminal case out of sheer pleasure for his first love of that field of the practice.

Again, he never did enjoy representing a corporation in court. He so much preferred to be retained on the side of some humble individual where his great heart could beat in full sympathy with his cause and summon his nobler talents in vindicating the cause of the weak against the strong.

He had an inexhaustible fund of stories which he drew on with a master hand as occasion demanded. He was keen of wit and sarcasm, ever ready at repartee, with a most lively appreciation of the ludicrous. Rarely did he try a lawsuit without injecting into it some pointed, witty or ludicrous suggestion which gave spice, flavor and life to an otherwise weary trial.

Once he was defending a murder case where the defendant (in self-defense, of course) shot a hole through the head of the deceased, thereby causing instant death. The prosecuting attorney had a most peculiarly shaped head. During the examination of a state's witness the prosecuting attorney, standing in position, said to the witness:

"Now, just show the jury on my head where the bullet entered and passed through the head of the deceased."

Thereupon Mr. Thomas interposed an objection. The judge, already wearied by a long-drawn-out trial in sultry weather, said sharply:

"Now, Mr. Thomas, what on earth do you mean by making an objection to evidence so plainly admissible?"

"Because," replied Mr. Thomas, with gravity of speech and saintly innocence of manner, "it isn't fair to compare that thing on the prosecuting attorney to a human head."

The effect of this sally was electrical. The prosecuting attorney was so unexpectedly taken aback that he dropped into his chair. The judge, overcome with mirth, dropped his head below the bench to hide his loss of judicial dignity, while the jury, seeing as never before the pert application of the suggestion, were so convulsed with laughter that they never could look with solemnity on the further proceedings while that peculiarly shaped head was bobbing about in front of them. Every now and then, even in the closing argument of the prosecuting attorney, some juror would involuntarily burst into a sudden fit of subdued laughter and everyone understood the cause. Of course, the verdict was "not guilty."

His lively disposition and keen sense of humor remained with him until his last days in the hospital where his dissolution occurred. Frequently when friend or attendant would express an appreciation of his suffering, his witty response dispelled gathering gloom, with sunshine, and caused a smile to replace a sympathetic tear.

Age and disease overcame the flesh, but never the spirit. A widely loved man, he went his way with a smile, and his passing blurred many eyes.

He was fond of his profession in all the active years of his life. He was proud of the achievements of the lawyers in their many fields of activity, and as he had from choice spent his life among lawyers, so when he came to die he requested (and this request was granted) that his funeral services be conducted wholly by members of his local County Bar Association.

"The lawyers know me better than anyone else," he said. "I have spent over fifty years of my life among them; they know my good qualities and will be discreet and generous enough to forget my frailties. Let them gather at my bier."

And so another shining light of our profession came, labored in our field for the allotted period of man's activity, and went to the Great Beyond.

MEMORIAL ADDRESS UPON J. D. BARNETT.

BY PATRICK HENRY CULLEN.

Hon. James D. Barnett, judge of the Eleventh Judicial Circuit of the State of Missouri, departed this life on the 10th day of March, 1916. He was born in Montgomery County, Missouri, in 1858. He received his education in the public schools, graduating from the St. Louis High School in 1876, and the St. Louis Law School in 1879, and immediately began the practice of law in the county of his birth. In 1886 he was elected Probate Judge of Montgomery County, which office he held until 1905, when he was elected judge of the Eleventh Judicial Circuit of the State of Missouri, which last position he held until the date of his death. He never married. He lived with his mother until her death, a few years ago, and after that an unmarried sister, the only member of the family who survived him. His home life was admirable, his devotion to his mother and sister was undivided, deep, constant and sublime.

It is fitting that we record our estimate of the life and character of one who has passed beyond the sense of praise or censure.

James D. Barnett was, in the truest and best sense, a gentleman; a man of education, high principle, courtesy and kindness; well bred and honorable. He led a very active life, but it was modest, simple, sincere and as blameless as that of any man I have ever known. Fond of merriment, and a boon companion, he was singularly free from all objectionable habits. His language was select and chaste, his thoughts pure.

He loved a good story, but never told an obscene one. He had no rancor, no malice in his nature, he was unselfish and forgiving, and never spoke ill of an antagonist, or condemned those who criticised him. He mixed and mingled with men, and felt and knew the clash of contending measures. As a citizen, lawyer and judge he was always the central figure in the activities of his city and county. In every relation, the force of his great character, his good sense and charming candor were embodied and unbosomed. He recognized his responsibility to God. The cardinal virtues and principles of Christianity were constantly illustrated in his daily life.

He was a student of good literature, he enjoyed the imagination pictures of the romanticists and was thrilled with the beauty of a poem. He was a master of history. He had read the record of the world, and could trace the course of human progress from age to age. He was familiar with the noted historical characters. He knew, honored and revered the great and good of every age, and from their lives and character he drew inspiration and modeled his own career and conduct. He was a cultured man, a scholar and a student, but these are but adornments which may be acquired in colleges, where sometimes pebbles are polished and diamonds dimmed. I desire to speak of Barnett, the man. He would have been a great man without education or culture. He was endowed with the genius of goodness and common sense. He was born with the brain of a philosopher and the heart of a mother. He was the poor man's friend, and sympathized with the weak and unfortunate. He loved to help. He had charity. He bestowed it with prodigal generosity. To age and youth he lent a helping hand. When failure fell on many a business man, he was the first to help. He did not stop to inquire if the object of his charity was worthy. To him any human being in need or distress was worthy. He knew temptation's strength, the weakness of the human will, and how easy good men fall when overwhelmed with fury's sudden flame, or crushed by poverty's skeleton clutch, and when they fell he cast no censure, but helped them rise and walk again. All the men and women that he has helped, clasping hand in hand, would form a radiant row long enough to encircle his city many times.

As a business man he was successful, and accumulated a competence without trying. He served as president of one of the leading banks of his city, and under his guidance it flourished and was prosperous. As a banker he was careful, prudent, conservative, yet his policy was liberal and helpful. In this thoughtless age it is common talk that bankers to be successful must be hard, stern and oppressive, but the record made by Judge Barnett as a banker demonstrates that in banking, as well as in all other lines of business, he who succeeds best is he who is fair, liberal and just. He was an ardent friend of public education and devoted

much of his life and thought to the betterment of the public school system. He believed that education was the birthright of every child, and that the schoolhouse should be the rallying ground of the republic—the deep and silent spring from which flows the life-giving waters of a free and just people.

But all his resplendent qualities showed brightest and best in his career as a lawyer and a judge. As a lawyer he was thoughtful, conservative, painstaking, always courteous to the court and opposing counsel, considerate of the feeling of witnesses. He tried his cases upon a high plane. I have served with him as co-counsel in some important and strenuous cases. He never became excited, never stopped thinking, and was always ready with some new idea bearing upon an essential feature of the case. In the presentation of a question to the court, he was direct, plain and forceful, always seizing and resting his argument upon the essential, underlying principles of law or justice involved. In argument he conceded much to the other side and never harshly attacked an opposing witness. His appeal was to the justice of his cause and the higher and nobler elements which arouse and control men. He possessed the confidence of the people, who knew him, to a marked degree. He never abused that confidence and his influence with juries, especially in his county where he was best known, was very great. Juries did not look upon him as a lawyer seeking to win a case, because what he said was clothed with such a garb of fairness and delivered with such directness and judicial poise that the juries accepted his statements as advice to be followed and were influenced by his argument almost as much as by the instructions of the court. He was every inch a lawyer. He never sacrificed the rights of a client. He was bold and relentless in presenting everything which could in justice be presented on behalf of his clients, and he feared no consequences. It may not be generally known, but it is true, that on one occasion, when the mob spirit was rampant in his county and threatened the life of a prisoner, he took the prisoner, his client, from jail to a concealed place and, unaided and alone, stood guard over him during the night, and when the morning came, the fury of the mob had abated, and his client was saved from its fury. He was engaged in nearly all important trials in his county, and many in adjoining counties, before he ascended the circuit bench, and was a most successful advocate.

His splendid qualities of heart, conscience and brain beamed forth in all their height, might and grandeur when he became circuit judge. He was distinctly of judicial type. Great judges are, like poets, born, not made, and Judge Barnett was born to be a judge. He could see both sides of all propositions, and with great precision weigh the merits of each. His vast and accurate knowledge of human nature enabled him to find the truth through a multiplied amount of details given by witnesses

from the various stations of life. He was, in my judgment, the most patient man on the bench that ever lived since Job faded from the earth. Nothing could disturb his poise and equilibrium, and his kingly courtesy and manifest kindness and unfailing good nature drove all bickerings from his court room and he maintained dignity without austerity and enforced his power without being tyrannical. There was not a drop of the tyrant's blood in his veins. He impressed the stamp of his personality on the law when he became a circuit judge. One of the most oppressive features in the administration of the law, in my judgment, is the cost system. I believe it is the duty of the state to furnish justice to all its people without money and without price. The primary concern of every government is to render justice to its people. For a litigant to be turned out of court because he or she is unable to secure the costs is shocking. During Judge Barnett's administration as judge of this circuit no one was turned out of court who had a meritorious cause because unable to secure costs. He construed the statute requiring costs to be secured most liberally, and never denied a worthy litigant his day in court because he was unable to secure costs. Where the plaintiff was an orphan, a widow or a cripple, or below the standard of an ordinary person on account of any infirmity or disease, he threw open the portals of justice and let them enter without cost. His views on this matter became so well known that a motion for costs was rarely filed, and as long as he presided justice, like salvation, was free. Of him it may be truly said he put the Star of Hope above the cradle of the poor man's babe, and bade him measure the justice of his cause with the greatest and mightiest of earth.

He knew the common law, the statutes and the decisions of the courts, and the philosophy and the reason of the law, but in my judgment he was at his best in adjudicating equitable causes; equity is logic founded on natural justice, and he was great as a chancellor.

He had profound respect for the jury system. He adhered to the ancient and correct theory that jurors are the supreme judges of the facts. He never encroached upon the province of a jury and never, as far as I know, gave the slightest intimation of his own view on the facts. Some may have criticised him because he was not inclined to "take the case from the jury." He probably was more liberal in letting cases go to the jury than other judges. But if he erred at all he erred on the safe side. The jury system is the great bulwark of liberty and the best and wisest tribunal that the accumulated wisdom of ages has been able to devise. It is the duty of judges to see that the great institution of trial by jury is not impaired or curtailed. It is the duty of the bench and bar to see that the right of trial by jury is held inviolate now and forever, and this cannot be true if judges harken to the present-day clamor that juries are unreasoning bodies and incapable of passing upon the

rights of their fellow-men. Some would abolish the entire jury, others would curtail and circumscribe its powers, but after all it is not possible to create a better tribunal for the trial of disputed questions than a jury of independent, practical men drawn from the varied walks of life. The judge who sustains the power of the jury and seeks not to curtail the part it plays in the administration of justice is adhering most closely to the fundamental principles of our government. If the liberty of this country is to be preserved, the rights of juries must never be curtailed. As long as the jury system is preserved in its original meaning we have nobly saved the last best hope of earth, and this was Judge Barnett's view, and it was based on his knowledge of the struggle that the liberty-loving Anglo-Saxon made to secure the right of trial by jury.

The office of circuit judge is close to the people. It vitally affects their status, property and personal rights. More people are affected by the decisions of a Circuit Judge not appealed from than by the decision of any one Supreme Judge. The salary of circuit judges should be doubled. They are now not paid as much as good accountants. It is wise that judges are elected by the people from the body of the district over which they preside. In a judicial district the people have knowledge of the lawyers and can be trusted to make a wise selection. That the people select wisely is demonstrated by the fact that the circuit judges in the state of Missouri are now and always have been the most conscientious, capable and incorruptible group of men in any department of the public service. Corruption has raised its hideous head too often in the public service, but not one breath of suspicion has ever blown upon a circuit judge in the state of Missouri. It is a record to be proud of and all Missourians should be proud of it.

Not only is it desirable that the people should know the judge, but it is more important that the judge should know and understand the people to whom he is to administer justice; he should know their ideals, their hopes, their fears, their motives and their ambitions. Such knowledge of the people and their environments aids in the formation of correct judgments and the imposition of proper sentences for crime. Judge Barnett knew the people in his district perfectly. He knew them all—the rich and the happy, the poor and the miserable—and it aided him greatly in administering the law. They all stood equal before the law as administered by him. Sin plated with gold never broke the strong lance of justice in his court, nor did poverty and rags suspend the punishment due to crime involving moral turpitude. He was in truth and in fact no respecter of persons. He condemned no one save by the fiat of the law. He saw some good in everyone. He concurred with the poet of the Rockies, who said:

In men whom men pronounce as ill
 I find so much of goodness still,
 In men whom men pronounce divine
 I find so much of stain and blot and crime
 That I hesitate to draw the line
 Between the two—when God has not.

In a practice of twenty-five years I have appeared before many trial judges in the country, in the cities, outside of this state, and in the Federal courts. I have tried to measure them all by an impartial standard, and it is my deliberate judgment that, take it all for all, James D. Barnett was the peer of any judge that ever presided over a circuit in this state.

In this day of vaulting ambition, and the spectacular rise of men, the career of Judge Barnett appears modest and commonplace. But after all it is the modest and the commonplace that makes the world better and fills the hearts of men with hope and happiness. He did his duty without fear; honor was his shield; he dispensed justice in kindness, and he lived and died a stainless gentleman. He honored the law. All men should honor the law. Disregard of law has embroiled the world in war and filled it with horrors, agonies and crimes. The rights of men and nations must be settled by law, not by force. He who upholds the law, state, national and international, serves his country best. I know it is grand to think of one's country as a military power supreme, above all other powers; I know it is glorious to know that its fluttering flag can float unhindered on every sea and its rolling drum-beat is heard in every land, and we justly honor one who leads the battle charge or stands uncovered on the vessel as she trembles on the waves; but "peace hath her victories no less renowned than war," and a just and incorruptible judge who will pause to render justice to a weakling or stoop to protect a beggar, and yet enforce the law in all its original strength, renders a greater and more enduring service to God and country than any martial hero that ever lived in the tide time.

CANONS OF ETHICS OF THE AMERICAN BAR ASSOCIATION.

[NOTE.—The following Canons of Professional Ethics were adopted by the American Bar Association at its thirty-first annual meeting at Seattle, Washington, on August 27, 1908.]

I.

PREAMBLE.

In America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II.

THE CANONS OF ETHICS.

No code or set of rules can be framed which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the numeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. *The Duty of the Lawyer to the Courts.*—It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper

ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. *The Selection of Judges.*—It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. *Attempts to Exert Personal Influence on the Court.*—Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstruction of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. *When Counsel for an Indigent Prisoner.*—A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. *The Defense or Prosecution of Those Accused of Crime.*—It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. *Adverse Influences and Conflicting Interests.*—It is the duty of a lawyer at the time of retainer to disclose to the client all the circum-

stances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interests of the client with respect to which confidence has been reposed.

7. *Professional Colleagues and Conflicts of Opinion.*—A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer are unworthy of those who should be brethren at the Bar; but nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. *Advising Upon the Merits of a Client's Cause.*—A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. *Negotiations with Opposite Party.*—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. *Acquiring Interest in Litigation.*—The Lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

11. *Dealing with Trust Property.*—Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. *Fixing the Amount of the Fee.*—In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for other cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. *Contingent Fees.*—Contingent fees, where sanctioned by law, should be under the supervision of the court, in order that clients may be protected from unjust charges.

14. *Suing a Client for a Fee.*—Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable

recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. *How Far a Lawyer May Go in Supporting a Client's Cause.*—Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties, than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interests of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

16. *Restraining Clients from Improprieties.*—A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrongdoing the lawyer should terminate their relation.

17. *Ill-Feeling and Personalities Between Advocates.*—Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. *Treatment of Witnesses and Litigants.*—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client

in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. *Appearance of Lawyer as Witness for His Client.*—When a lawyer is witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

20. *Newspaper Discussion of Pending Litigation.*—Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. *Punctuality and Expedition.*—It is the duty of the lawyer not only to his client, but also to the courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. *Candor and Fairness.*—The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should

he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. *Attitude Toward Jury.*—All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. *Right of Lawyer to Control the Incidents of the Trial.*—As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. *Taking Technical Advantage of Opposite Counsel; Agreements with Him.*—A lawyer should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.

26. *Professional Advocacy Other Than Before Courts.*—A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect.*—The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for

professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. *Stirring Up Litigation, Directly or Through Agents.*—It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. *Upholding the Honor of the Profession.*—Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to main-

tain the dignity of the profession and to improve not only the law but the administration of justice.

30. *Justifiable and Unjustifiable Litigations.*—The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. *Responsibility for Litigation.*—No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. *The Lawyer's Duty in Its Last Analysis.*—No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

III.

OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the state of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other states of the union*—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of.....

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

We recommend this form of oath for adoption by the proper authorities in all the states and territories.

*Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the bar in all the other states require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyers are not as specifically defined by law as in the states named.

HONORARY MEMBERS OF MISSOURI BAR ASSOCIATION

JUDGES SUPREME COURT

Waller W. Graves,	Charles B. Faris,
Henry W. Bond,	Fred L. Williams,
James T. Blair,	Robert F. Walker.
Archelaus M. Woodson,	

ST. LOUIS COURT OF APPEALS

JUDGES—George D. Reynolds, William Dee Becker, William H. Allen.

KANSAS CITY COURT OF APPEALS

JUDGES—James Ellison, Francis H. Trimble, Ewing C. Bland.

SPRINGFIELD COURT OF APPEALS

JUDGES—John T. Sturgis, Argus Cox, John S. Farrington.

JUDGES OF CIRCUIT COURTS

1st Circuit—James A. Cooley.....	Kirksville.
Counties—Adair, Knox, Lewis.	
2nd Circuit—Vernon L. Drain.....	Shelbyville.
Counties—Macon, Shelby.	
3rd Circuit—L. B. Woods.....	Princeton.
Counties—Grundy, Harrison, Mercer, Putnam.	
4th Circuit—John M. Dawson.....	Maryville.
Counties—Atchison, Gentry, Nodaway, Worth.	
5th Circuit—Alonzo D. Burnes.....	Platte City.
Counties—Andrew, Clinton, DeKalb, Holt, Platte.	
6th Circuit—Charles H. Mayer, Thomas B. Allen, William H. Utz,	
County—Buchanan.	St. Joseph.
7th Circuit—Frank P. Divelbiss.....	Richmond.
Counties—Carroll, Clay, Ray.	

PROCEEDINGS OF THIRTY-FOURTH ANNUAL MEETING. 217

- 8th Circuit—J. Hugo Grimm, George H. Shields, Karl Kimmel, Wilson A. Taylor, Leo S. Rassieur, Rhodes E. Cave, Thomas C. Hennings, William T. Jones, Kent K. Koerner, John W. Calhoun, Charles B. Davis, Victor H. Falkenhainer, Vital W. Garesche, Benjamin J. Klene—City of St. Louis.St. Louis.
- 9th Circuit—A. W. Walker.Fayette.
Counties—Howard, Randolph.
- 10th Circuit—William T. Ragland.Paris.
Counties—Marion, Monroe, Ralls.
- 11th Circuit—Ernest S. Gantt.Mexico.
Counties—Audrain, Montgomery, Warren.
- 12th Circuit—Fred Lamb.Salisbury.
Counties—Chariton, Linn, Sullivan.
- 13th Circuit—John W. McElhinney.Clayton.
Gustavus A. Wurdeman.Webster Groves.
County—St. Louis.
- 14th Circuit—John G. Slate.Jefferson City.
Counties—Cole, Cooper, Maries, Miller, Moniteau,
Morgan.
- 15th Circuit—Samuel Davis.Marshall.
Counties—Lafayette, Saline.
- 16th Circuit—Thomas B. Buckner, O. A. Lucas, Edward E. Porterfield, Thomas J. Seehorn, William O. Thomas, Allen C. Southern, Clarence A. Burney, Willard P. Hall, Daniel E. Bird, Harris Robinson
County—Jackson.Kansas City.
- 17th Circuit—Ewing Cockrell.Warrensburg.
Counties—Cass, Johnson.
- 18th Circuit—Cornelius H. Skinker.Bolivar.
Counties—Camden, Dallas, Hickory, Polk, Webster,
Wright.
- 19th Circuit—Leigh B. Woodside.Salem.
Counties—Crawford, Dent, Laclede, Phelps, Pualaski, Texas.
- 20th Circuit—E. P. Dorris.Alton.
Counties—Carter, Howell, Oregon, Shannon.

- 21st Circuit—Elbridge M. Dearing.....Potosi.
Counties—Iron, Jefferson, Reynolds, Washington,
Wayne.
- 22nd Circuit—W. S. C. Walker.....Kennett.
Counties—Dunklin, Stoddard.
- 23rd Circuit—Guy D. Kirby, Arch A. Johnson.....Springfield.
County—Greene.
- 24th Circuit—Charles L. Henson.....Mt. Vernon
Counties—Barry, Lawrence, McDonald, Newton.
- 25th Circuit—David E. Blair.....Joplin.
Joseph D. Perkins.....Carthage.
County—Jasper.
- 26th Circuit—Berry G. Thurman.....Nevada.
Counties—Barton, Cedar, Dade, Vernon.
- 27th Circuit—Peter H. Huck.....Ste. Genevieve.
Counties—Bollinger, Madison, Perry, St. Francois,
Ste. Genevieve.
- 28th Circuit—Frank Kelly.Cape Girardeau.
Counties—Cape Girardeau, Mississippi, Scott.
- 29th Circuit—Charles A. Calvird.....Clinton.
Counties—Bates, Benton, Henry, St. Clair.
- 30th Circuit—Hopkins B. Shain.....Sedalia.
County—Pettis.
- 31st Circuit—Fred Stewart.Ava.
Counties—Christian, Douglas, Ozark, Stone, Taney.
- 32nd Circuit—Ransom A. Breuer.....Hermann.
Counties—Franklin, Gasconade, Osage.
- 33rd Circuit—John Pender Foard.....Poplar Bluff.
Counties—Butler and Ripley.
- 34th Circuit—David H. Harris.....Fulton.
Counties—Boone and Callaway.
- 35th Circuit—Edgar B. Woolfolk.....Troy.
Counties—Lincoln, Pike and St. Charles.
- 36th Circuit—Arch B. Davis.....Chillicothe.
Counties—Caldwell, Daviess and Livingston.
- 37th Circuit—N. M. Pettingill.....Memphis.
Counties—Clark, Scotland and Schuyler.
- 38th Circuit—Sterling H. McCarty.....Caruthersville.
Counties—New Madrid and Pemiscot.

JUDGES CRIMINAL COURTS

Krueger, Chauncey J.	St. Louis
Latshaw, Ralph S.	Kansas City
Miller, Calvin N.	St. Louis
Rich, Jno. A.	Lexington

NON-RESIDENT HONORARY MEMBERS AND WHEN
ELECTED

Peter S. Grosscup.	Chicago, Ill.	December, 1907
William R. Riddell.	Ontario, Canada.	September, 1909
Henry Wade Rogers.	New Haven, Conn.	July, 1910
P. W. Meldrim.	Savannah, Ga.	September, 1911
Simeon E. Baldwin.	New Haven, Conn.	September, 1911
Roscoe Pound.	Cambridge, Mass.	September, 1912
W. M. Thornton.	Charlottesville, Va.	September, 1912
Hampton L. Carson.	Philadelphia, Pa.	September, 1912
N. Charles Burke.	Baltimore, Md.	September, 1913
W. R. Vance.	Minneapolis, Minn.	September, 1913
Horace E. Deemer.	Des Moines, Ia.	September, 1913
Frank K. Dunn.	Springfield, Ill.	September, 1913
Rome G. Brown.	Minneapolis, Minn.	September, 1914
George Sutherland.	Salt Lake, Utah.	September, 1915
Henry D. Clayton.	Montgomery, Ala.	September, 1916
H. S. Harley.	Chicago, Ill.	September, 1916

RESIDENT HONORARY MEMBER

Rev. George H. Combs, D.D.	Kansas City.	September, 1915
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LIST OF MEMBERS

Abbott, A. L.	New Bank of Commerce Bldg.	St. Louis
Abington, Ed L.		Poplar Bluff
Achtenberg, Ben M.	915 Commerce Bldg.	Kansas City
Adams, Dorman E.		Hamilton
Ailworth, R. L.	1224 McCausland	St. Louis
Alexander, Henry E.		Cape Girardeau
Alford, E. L.		Perry
Allen, Clifford B.	Wainwright Bldg.	St. Louis
Allen, Chas. Claflin	LaSalle Bldg.	St. Louis
Allen, D. C.		Liberty
Allen, Thomas B.		St. Joseph
Allen, W. H.		St. Louis
Anderson, Norton B.		Platte City
Anderson, Roscoe	619 3rd National Bank Bldg.	St. Louis
Anderson, Thos. L.	Central Nat'l Bank Bldg.	St. Louis
Andrews, Sidney F.	Pierce Bldg.	St. Louis
Anthony, Robert A.		Fredericktown
Arnold, Glendy B.	Municipal Courts Bldg.	St. Louis
Arnold, Mercer		Joplin
Ashley, H. D.	Commerce Bldg.	Kansas City
Atkinson, Jno. M.		Jefferson City
Atwood, Frank E.		Carrollton
Atwood, John H.	804 Commerce Bldg.	Kansas City
Aylward, James P.	1116 Grand Ave. Temple	Kansas City
Baer, William	Municipal Courts Bldg.	St. Louis
Bailey, R. E.		Sikeston
Baker, J. R.		Fulton
Bakewell, Paul	LaSalle Bldg.	St. Louis
Bakewell, Paul, Jr.	Fullerton Bldg.	St. Louis
Ball, David A.		Louisiana
Ball, Eugene E.	1500 Grand Ave.	Kansas City
Ball, R. E.	1st Nat'l Bank Bldg.	Kansas City
Ballinger, Wm.	Court House	Kansas City
Banister, E. W.	Syndicate Trust Bldg.	St. Louis
Barbee, Joshua		Marshall
Barbour, E. A.		Springfield
Barclay, Shepard	Commercial Bldg.	St. Louis
Barker, John T.		Kansas City
Barnes, Clarence A.		Mexico

Barnett, Jas. D.		Montgomery City
Barnett, Orville M.		Columbia
Baron, David	Boatmen's Bank Bldg.	St. Louis
Barth, Irvin V.	Nat'l Bank of Commerce Bldg.	St. Louis
Bass, S. S.	Times Bldg.	St. Louis
Bass, Sigmund M.	Times Bldg.	St. Louis
Bates, Chas. W.	Boatmen's Bank Bldg.	St. Louis
Bean, Edwin J.		Jefferson City
Beardsley, Henry M.	410 Commerce Bldg.	Kansas City
Beck, Geo. F.	Rialto Bldg.	St. Louis
Biggs, Davis	Pierce Bldg.	St. Louis
Bird, Daniel E.	Court House.	Kansas City
Bishop, C. Orrick	Municipal Courts Bldg.	St. Louis
Bishop, John E.	3rd Nat'l Bank Bldg.	St. Louis
Black, Arthur G.	606 Commerce Bldg.	Kansas City
Blackmar, Charles M.	Commerce Bldg.	Kansas City
Blair, Albert	Pierce Bldg.	St. Louis
Bland, W. J.	611 Commerce Bldg.	Kansas City
Blanton, Harry C.		Sikeston
Blanton, H. H.	1021 New York Life Bldg.	Kansas City
Blevins, John A.	Commercial Bldg.	St. Louis
Blodgett, Henry W.	Chemical Bldg.	St. Louis
Blodgett, Eugene	New Bank of Commerce Bldg.	St. Louis
Boisaubin, L. Vincent	3rd Nat'l Bank Bldg.	St. Louis
Bond, Samuel		Perryville
Bond, Sterling P.	Rialto Bldg.	St. Louis
Bond, Thomas	3rd Nat'l Bank Bldg.	St. Louis
Boogher, John H.	New Bank of Commerce Bldg.	St. Louis
Booth, George E.	423 Title Guaranty Bldg.	St. Louis
Borth, Chas. O.		Doniphan
Bothwell, J. H.	Sedalia Nat'l Bank Bldg.	Sedalia
Bowersock, Justin D.	302 Fidelity Trust Bldg.	Kansas City
Bowker, Wm. M.		Nevada
Boyd, Jas. P.		Paris
Boyle, K. C.	414 Keith & Perry Bldg.	Kansas City
Boyle, Murat.	Grand Ave. Temple Bldg.	Kansas City
Brackmann, Amandus		Clayton
Bradley, Paul E.	Republic Bldg.	Kansas City
Breuer, Ransom A.		Hermann
Brewster, Arthur T.		Poplar Bluff
Britton, Roy F.	3rd Nat'l Bank Bldg.	St. Louis
Brown, Addison	Woodruff Bldg.	Springfield
Brown, R. A.		St. Joseph
Brownrigg, R. T.	Central Nat'l Bank Bldg.	St. Louis

Broyer, Leon.....	5834 Berlin Ave.....	St. Louis
Bruce, R. I.....		Liberty
Brumback, Frank.....	603 Rialto Bldg.....	Kansas City
Brumback, Herman.....	Scarritt Bldg.....	Kansas City
Bryan, P. Taylor.....	Pierce Bldg.....	St. Louis
Bryan, W. Christy.....	Pierce Bldg.....	St. Louis
Bryant, Geo. S., Jr.....	567 Sheidley Bldg.....	Kansas City
Bryant, Hughes.....	R. A. Long Bldg.....	Kansas City
Bryson, Joseph M.....	Railway Exchange Bldg.....	St. Louis
Buffington, James W.....		Mexico
Burnes, Alonzo D.....		Platte City
Burney, Clarence A.....		Kansas City
Burns, Alpha L.....		Brookfield
Burns, Thos. P.....		Brookfield
Busby, Wm. G.....		Carrollton
Caldwell, Robt. B.....	731 Scarritt Bldg.....	Kansas City
Calvin, W. W.....	927 Scarritt Bldg.....	Kansas City
Calvird, Charles A.....		Clinton
Cannon, Thomas D.....	Merchants Laclede Bldg.....	St. Louis
Camack, Edwin C.....	1200 Gloyd Bldg.....	Kansas City
Carmean, Samuel M.....	New York Life Bldg.....	Kansas City
Carns, Theo. L.....	902 New York Life Bldg.....	Kansas City
Carr, Jas. A.....	Roe Bldg.....	St. Louis
Carr, John C.....		Cameron
Carroll, J. H.....	New Bank of Commerce Bldg.....	St. Louis
Case, Clarence T.....	3rd Nat'l Bank Bldg.....	St. Louis
Casey, M. E.....	910 Scarritt Bldg.....	Kansas City
Cashman, John.....	New Bank of Commerce Bldg.....	St. Louis
Caulfield, Henry S.....	3rd Nat'l Bank Bldg.....	St. Louis
Cave, Rhodes E.....		St. Louis
Cave, Willard P.....		Moberly
Chamier, Arthur B.....		Moberly
Chandler, Albert.....	Rialto Bldg.....	St. Louis
Chaplin, T. F.....	3rd Nat'l Bank Bldg.....	St. Louis
Chastain, DeWitt C.....		Butler
Clark, Albert M.....		Richmond
Clark, Boyle G.....		Columbia
Clark, Champ.....		Bowling Green
Clark, H. C.....		Nevada
Clark, John Abbott.....		Cameron
Clark, Lincoln R.....	Dep't of Justice.....	Washington, D. C.
Cleary, John M.....	1118 Scarritt Bldg.....	Kansas City
Cobbs, Thos. H.....	3rd Nat'l Bank Bldg.....	St. Louis
Cochran, Alex G.....	7 Westmoreland Place.....	St. Louis

Coles, Walter D.	Security Bldg.	St. Louis
Collins, Chas. Cummings	3rd Nat'l Bank Bldg.	St. Louis
Comer, Chas. P.	Pierce Bldg.	St. Louis
Conkling, Newlan		Carrollton
Conrad, Henry S.	809 Scarritt Bldg.	Kansas City
Cook, J. William		Crane
Cook, W. B. M.		Montgomery City
Cooper, A. L.	524 Keith & Perry Bldg.	Kansas City
Cornwell, F. L.	LaSalle Bldg.	St. Louis
Corum, C. D.	Bank of Commerce Bldg.	St. Louis
Craven, W. A.		Excelsior Springs
Creason, Goodwin	621 New York Life Bldg.	Kansas City
Creech, B. J.		Troy
Crites, J. J.		Rolla
Crow, C. C.	Gloyd Bldg.	Kansas City
Cullen, Patrick H.	Commercial Bldg.	St. Louis
Cumming, A. S.		Bethany
Cunningham, L.		Bolivar
Curless, Francis M.	Wright Bldg.	St. Louis
Currie, Dwight D.	3rd Nat'l Bank Bldg.	St. Louis
Dame, James E.	Central Nat'l Bank Bldg.	St. Louis
Daniel, Geo. H.		Springfield
Daniel, J. B.		Piedmont
Davis, Arch B.		Chillicothe
Davis, Joseph T.	Pierce Bldg.	St. Louis
Davis, Monton	Wright Bldg.	St. Louis
Davis, J. Lionberger	St. Louis Union Trust Co.	St. Louis
Davis, Samuel		Marshall
Davis, Walter Taylor	3rd Nat'l Bank Bldg.	St. Louis
Dean, O. H.	Scarritt Bldg.	Kansas City
Dearmont, Russell L.		Cape Girardeau
Denham, D. D.	County Court House	Kansas City
De Reign, Albert		Benton
Dickinson, C. C.		Clinton
Dickson, Joseph, Jr.	3rd Nat'l Bank Bldg.	St. Louis
Diehm, Walter	Rialto Bldg.	St. Louis
Divelbiss, Frank P.		Potosi
Dolman, John E.		St. Joseph
Donaldson, Glenn R.	308 Victor Bldg.	Kansas City
Donaldson, W. R.	Bank of Commerce Bldg.	St. Louis
Donnell, Forrest C.	Boatmen's Bank Bldg.	St. Louis
Downing, B.	731 Scarritt Bldg.	Kansas City
Draffen, W. V.		Boonville
Dudley, W. A.		Troy

Dumm, A. T.	Jefferson City
Dunn, Denton.	709 Scarritt Bldg. Kansas City
Durham, L. E.	901 Republic Bldg. Kansas City
Dyer, H. Chouteau.	1530 Boatmen's Bank Bldg. St. Louis
Dyer, L. C.	House of Representatives. Washington, D. C.
Eaton, John A.	300 U. S. & Mex. Trust Bldg. Kansas City
Eastin, Lucien J.	St. Joseph
Eby, David H.	Hannibal
Edmonson, Otis M.	1003 Republic Bldg. Kansas City
Edwards, Albert N.	Bank of Commerce Bldg. St. Louis
Edwards, Geo. L.	Bank of Commerce Bldg. St. Louis
Edwards, Waldo	Bevier
Egan, John G.	Frisco Bldg. St. Louis
Elder, Conway.	1209 Walton Ave. St. Louis
Eliot, Edward C.	3rd Nat'l Bank Bldg. St. Louis
Ellerbe, Chris P.	3rd Nat'l Bank Bldg. St. Louis
Ellison, E. D.	718 Commerce Bldg. Kansas City
English, Fred L.	LaSalle Bldg. St. Louis
English, Geo. H., Jr.	930 Scarritt Bldg. Kansas City
Evans, Andrew F.	1104 Gloyd Bldg. Kansas City
Evans, W. A.	Lamar
Evans, W. F.	Frisco Bldg. St. Louis
Evans, Wm. N.	West Plains
Ewing, Lee B.	Nevada
Ewing, Mark.	Merchants Laclede Bldg. St. Louis
Fahey, Wm. F.	3rd Nat'l Bank Bldg. St. Louis
Fauntleroy, Thos. T.	Commercial Bldg. St. Louis
Fenn, Bert F.	Commonwealth Trust Bldg. St. Louis
Ferriss, Franklin.	Rialto Bldg. St. Louis
Ferriss, Henry T.	Rialto Bldg. St. Louis
Fields, Percy C.	836 New York Life Bldg. Kansas City
Finch, Jas. A.	Fornfelt
Fisher, Daniel D.	Court House. St. Louis
Flourney, W. S.	Independence
Fordyce, S. W., Jr.	St. Louis
Foristel, Edw. W.	Title-Guaranty Bldg. St. Louis
Forlow, Frank L.	112 N. Allen St. Webb City
Frank, D. A.	Boatmen's Bank Bldg. St. Louis
Franklin, Nelson A.	Unionville
Frumberg, A. M.	New Bank of Commerce Bldg. St. Louis
Fry, W. W., Jr.	Mexico
Gage, John B.	1108 Grand Ave. Temple. Kansas City
Gallant, C. Lew.	810 Boatmen's Bank Bldg. St. Louis
Gallenkamp, Charles F.	Custom House. St. Louis

Gallivan, Thomas		New Madrid
Gamble, E. H.	915 Commerce Bldg	Kansas City
Gantt, E. S.		Mexico
Gardner, A. E. L.		Clayton
Gardner, W. A.		Farmington
Garvin, Wm. E.	Wainwright Bldg.	St. Louis
Gates, Edw. P.	930 Scarritt Bldg	Kansas City
Geittman, E. J.	1200 Gloyd Bldg.	Kansas City
Gentry, North Todd.		Columbia
Gentry, Wm. R.	Merchants Laclede Bldg.	St. Louis
German, Chas. W.	906 Commerce Bldg	Kansas City
Gilbert, Chas. E.	904 N. Washington St.	Nevada
Gilbert, Wm. R.	619 3rd Nat'l Bank Bldg.	St. Louis
Gilbert, William S.	502 Rialto Bldg.	Kansas City
Glenn, Allen		Harrisonville
Godard, Porter B.	605 New York Life Bldg.	Kansas City
Goode, Richard L.	Washington Univ. Law School.	St. Louis
Goodman, Burr	302 Title Guaranty Bldg.	St. Louis
Goodrich, James E.	611 Commerce Bldg.	Kansas City
Gose, J. T.		Shelbina
Gossett, A. N.	Dwight Bldg.	Kansas City
Grant, Lee W.	Carleton Bldg.	St. Louis
Gray, Howard		Carthage
Green, Ernest A.	Bank of Commerce Bldg	St. Louis
Green, James F.	Railway Exchange Bldg.	St. Louis
Green, John F.	Railway Exchange Bldg.	St. Louis
Green, Leslie C.		Poplar Bluff
Greene, W. W.	Scarritt Bldg.	Kansas City
Greensfelder, U. V.		Clayton
Griffin, Everett Paul.	City Hall	St. Louis
Griffin, Gerald	Title Guaranty Bldg.	St. Louis
Griffin, W. E.	604 Grand Ave. Temple Bldg.	Kansas City
Grossman, Emanuel M.	Rialto Bldg.	St. Louis
Grover, J. C.	709 Scarritt Bldg.	Kansas City
Guthrie, Joseph A.	531 Scarritt Bldg.	Kansas City
Hackler, T. J.		Lee's Summit
Hackney, Thos.		Carthage
Hadley, Herbert S.	524 Keith & Perry Bldg	Kansas City
Haeussler, Harry H.	Merchants Laclede Bldg.	St. Louis
Haff, D. J.	906 Commerce Bldg.	Kansas City
Hagerman, Frank	1211 Commerce Bldg.	Kansas City
Hagerman, Lee W.	Rialto Bldg.	St. Louis
Haid, A. E.	Frisco Bldg.	St. Louis
Haid, Geo. F.	3rd Nat'l Bank Bldg.	St. Louis

Haley, J. H.		Bowling Green
Halliburton, J. W.		Carthage
Hall, Claud D.	Central Nat'l Bank Bldg.	St. Louis
Hall, Fred S.	Central Nat'l Bank Bldg.	St. Louis
Hall, George		Trenton
Hall, Homer	Custom House.	St. Louis
Hall, W. P.	715 New York Life Bldg.	Kansas City
Hallett, W. H.		Nevada
Hamilton, Henry A.	Federal Reserve Bank Bldg.	St. Louis
Hamlin, O. T.		Springfield
Hancock, W. Scott	1837 Boatmen's Bank Bldg.	St. Louis
Harbor, E. M.		Trenton
Hardesty, B. C.		Cape Girardeau
Hardin, Charles B.	3901 Park Ave.	St. Louis
Hargus, J. C.	Rialto Bldg.	Kansas City
Hargus, Sam O.	332 Rialto Bldg.	Kansas City
Harkless, Jas. H.	1000 Grand Ave. Temple Bldg.	Kansas City
Harlan, Thos. B.	1105 Missouri Trust Bldg.	St. Louis
Harris, David H.		Fulton
Harris, Frank G.		Columbia
Harris, J. D.		Carthage
Harris, Virgil M.	Mercantile Trust Co.	St. Louis
Harvey, J. G. L.	609 Rialto Bldg.	Kansas City
Hart, Charles K.		Brookfield
Harvey, Thos. B.	Municipal Courts Bldg.	St. Louis
Hausman, Albert E.	3rd Nat'l Bank Bldg.	St. Louis
Hawes, Harry B.	3rd Nat'l Bank Bldg.	St. Louis
Hay, Charles M.	Commercial Bldg.	St. Louis
Hayden, M. U.	Times Bldg.	St. Louis
Haynes, T. N.		Harrisonville
Hayward, Francis M.	705 New York Life Bldg.	Kansas City
Heitman, N. F.	734 New York Life Bldg.	Kansas City
Hennings, Thos. C.	Municipal Courts Bldg.	St. Louis
Henson, L. M.	105-A Main St.	Poplar Bluff
Heyman, Lester I.	Central Nat'l Bank Bldg.	St. Louis
Higbee, Edward		Kirkville
Hill, David W.		Poplar Bluff
Hines, T. D.		Jackson
Hinton, E. W.	Univ. of Chicago Law School	Chicago
Histed, Clifford	1000 Grand Ave. Temple Bldg.	Kansas City
Hitchcock, Geo. C.	Court House	St. Louis
Hobein, Frank A.	Wainwright Bldg.	St. Louis
Hocker, Lon O.	3rd Nat'l Bank Bldg.	St. Louis
Hogsett, W. S.	1012 Grand Ave. Temple Bldg.	Kansas City

Holland, Robert A., Jr.	Central Nat'l Bank Bldg.	St. Louis
Holliday, John H.	3rd Nat'l Bank Bldg.	St. Louis
Homer, Wm. B.	Merchants Laclede Bldg.	St. Louis
Hook, Inghram	202 Fidelity Trust Bldg.	Kansas City
Hope, John A.	Bank of Commerce Bldg.	St. Louis
Hornsby, Joseph L.	Rialto Bldg.	St. Louis
Hostetter, J. D.		Bowling Green
Hoss, O. H.		Nevada
Houck, Giboney		Cape Girardeau
Houts, Charles A.	Custom House	St. Louis
Houts, Hale	901 Republic Bldg.	Kansas City
Howe, Jephtha D.	Bank of Commerce Bldg.	St. Louis
Howell, Shrader P.		Jefferson City
Hubbell, Platt		Trenton
Huck, Peter H.		Ste. Genevieve
Huckelberry, J. H.		Kirkwood
Hudson, James F.	Security Bldg.	St. Louis
Hudson, Manley O.		Columbia
Hudson, Fred S.		Chillicothe
Hudson, O. B.		Grant City
Huff, Virgil V.		Marshall
Huffman, Edwin E.	Pierce Bldg.	St. Louis
Hughes, Ralph		Liberty
Hull, James H.		Platte City
Humphrey, Geo. N.		Shelbina
Hunter, J. W.		California
Hunter, S. Oak		Moberly
Hutton, John G.	701 New York Life Bldg.	Kansas City
Ingraham, R. J.	Commerce Bldg.	Kansas City
Irland, F. W.	Railway Exchange Bldg.	St. Louis
Irwin, Wm. C.		Jefferson City
James, Eldon R.		Columbia
James, Grover C.		Joplin
James, W. K.		St. Joseph
James, Wm. R.	816 Grand Ave. Temple Bldg.	Kansas City
Jamison, Dorsey A.	Pierce Bldg.	St. Louis
Jamison, Jos. W.	Wainwright Bldg.	St. Louis
January, M. T.		Nevada
Jeffries, Sam B.	Bank of Commerce Bldg.	St. Louis
Johnson, Charles P.	Navarre Bldg.	St. Louis
Johnson, Frank G.		Kansas City
Johnson, J. D.	Bank of Commerce Bldg.	St. Louis
Johnson, James M.		Kansas City
Johnson, Waldo P.		Osceola

Johnson, W. T.	312 Keith & Perry Bldg.	Kansas City
Jones, Breckinridge	Mississippi Valley Trust Co.	St. Louis
Jones, Elliott H.	Scarritt Bldg.	Kansas City
Jones, Frank X.	3 Kingsbury Place.	St. Louis
Jones, James C.	Merchants Laclede Bldg.	St. Louis
Jones, James C., Jr.	3rd Nat'l Bank Bldg.	St. Louis
Jones, Richard A.	Federal Reserve Bank Bldg.	St. Louis
Jones, S. J.		Carrollton
Jones, Wilbur B.	535 Clara Ave.	St. Louis
Jones, Wm. T.	Court House.	St. Louis
Jourdan, Morton	3rd Nat'l Bank Bldg.	St. Louis
Judson, Frederick N.	Rialto Bldg.	St. Louis
Kehde, Alford.	Bank of Commerce Bldg.	St. Louis
Kelley, Frank P.		Cape Girardeau
Kelsey, Fred W.		Joplin
Kelso, A. W.		Grant City
Kelso, I. R.	Railway Exchange Bldg.	St. Louis
Kennedy, D. E.		Sedalia
Kennish, John.		Jefferson City
Kimmell, Karl.		St. Louis
King, Clarence H.	220 N. 4th St.	St. Louis
King, James E.	3rd Nat'l Bank Bldg.	St. Louis
Kingsley, Geo., Jr.	Commerce Bldg.	Kansas City
Kinsey, Wm. M.	Court House.	St. Louis
Kirby, Daniel N.	Security Bldg.	St. Louis
Kirschner, C. H.	1110 Commerce Bldg.	Kansas City
Kiskaddon, J. C.		Clayton
Knehans, O. A.	Custom House.	St. Louis
Koerner, Kent K.		St. Louis
Kortjohn, Henry.	Merchants Laclede Bldg.	St. Louis
Krauthoff, Edwin A.	1015 Republic Bldg.	Kansas City
Ladd, Sanford B.	New York Life Bldg.	Kansas City
Lake, Edward.	3rd Nat'l Bank Bldg.	St. Louis
Lake, Rush C.	Commerce Bldg.	Kansas City
Lamar, Robert.		Houston
Lamb, Fred.		Salisbury
Lamb, Gilbert.		Salisbury
Lamm, Henry.		Sedalia
Lampkin, Walter L.	1104 Gloyd Bldg.	Kansas City
Landis, John C.		St. Joseph
Landon, Thad B.	Orear-Leslie Bldg.	Kansas City
Langworthy, Herman M.	Scarritt Bldg.	Kansas City
Larimore, H. H.	617 Midland Bldg.	Kansas City
Lashly, J. M.	Central Nat'l Bank Bldg.	St. Louis

Lathrop, Gardiner.....	Railway Exchange Bldg.....	Chicago
Laughlin, L. A.....	509 Republic Bldg.....	Kansas City
Lawler, Clement A.....	Fidelity Trust Bldg.....	Kansas City
Lawson, John D.....		Columbia
Lawson, Martin E.....		Liberty
Lay, James H.....		Jefferson City
Leahy, John S.....	Bank of Commerce Bldg.....	St. Louis
Lee, Ilus M.....	1116 Grand Ave. Temple Bldg.....	Kansas City
Lee, John F.....	Rialto Bldg.....	St. Louis
Lehmann, Fred W.....	Merchants Laclede Bldg.....	St. Louis
Lehmann, John S.....	Merchants Laclede Bldg.....	St. Louis
Lehmann, Sears.....	Merchants Laclede Bldg.....	St. Louis
Leonard, Loyal L.....	Rialto Bldg.....	St. Louis
Levi, A. L.....	619 3rd Nat'l Bank Bldg.....	St. Louis
Lilly, Major J.....		Moberly
Lindsay, James D.....		Jefferson City
Lionberger, Isaac.....	Security Bldg.....	St. Louis
Lloyd, James T.....		Shelbyville
Lockwood, Geo R.....	628 Rialto Bldg.....	St. Louis
Loeb, Isidore.....		Columbia
Long, Breckinridge.....	State Dept.....	Washington, D. C.
Lorie, Jacob L.....	606 American Bank Bldg.....	Kansas City
Lovan, A. B.....		Springfield
Lowe, Frank M.....	1022 Scarritt Bldg.....	Kansas City
Lowenhaupt, Abe.....	3rd Nat'l Bank Bldg.....	St. Louis
Lozier, Ralph F.....		Carrollton
Lubke, Geo. W.....	Title Guaranty Bldg.....	St. Louis
Lubke, Geo. W., Jr.....	Title Guaranty Bldg.....	St. Louis
Lucas, John H.....		Kansas City
Lucas, Wm. C.....	Keith & Perry Bldg.....	Kansas City
Lyon, A. Stanford.....	901 Scarritt Bldg.....	Kansas City
Lyons, Martin.....	711 R. A. Long Bldg.....	Kansas City
McAllister, Frank W.....		Jefferson City
McAntire, J. W.....		Joplin
McBaine, J. P.....		Columbia
McCammon, John P.....	Woodruff Bldg.....	Springfield
McCarty, John R.....	Times Bldg.....	St. Louis
McClanahan, A. R.....	524 Rialto Bldg.....	Kansas City
McClarín, Wm. H.....	Carleton Bldg.....	St. Louis
McClintock, W. S.....	1015 Republic Bldg.....	Kansas City
McCullen, Edward H.....	Municipal Courts Bldg.....	St. Louis
McCullough, F. H.....		Edina
McDavid, Frank M.....		Springfield
McDonald, Jesse.....	3rd Nat'l Bank Bldg.....	St. Louis

McElhinney, John W.	Clayton
McFarland, Bates H.	Bank of Commerce Bldg. St. Louis
McIntyre, Jos. S.	Central Nat'l Bank Bldg. St. Louis
McKay, John T.	Kennett
McLaran, R. L.	Merchants Laclede Bldg. St. Louis
McLeod, W. D.	Scarritt Bldg. Kansas City
McNatt, Carr.	Aurora
McNatt, John L.	Aurora
McPheeters, Sam B.	Central Nat'l Bank Bldg. St. Louis
McPherson, I. V.	Aurora
McQuillin, Eugene.	Court House. St. Louis
Macauley, Charles J.	Merchants Laclede Bldg. St. Louis
Madden, T. J.	806 Scarritt Bldg. Kansas City
Mahan, Dulany.	Hannibal
Mahan, Geo. A.	Hannibal
Major, Elliott W.	Jefferson City
Major, Sam'l C.	Fayette
Mann, Edgar P.	Springfield
Mann, Frank C.	Springfield
Mansfield, A. H.	125 Railway Exchange Bldg. St. Louis
Marbury, Benjamin H.	Liberty St. Farmington
Marks, Thos. R.	Commerce Bldg. Kansas City
Maroney, A. C.	Central Nat'l Bank Bldg. St. Louis
Martin, Thos. W.	Lamar
Mason, Dallas T.	5567 Waterman Ave. St. Louis
Mason, James H.	Springfield
May, Robert A.	Louisiana
Mayer, Charles H.	St. Joseph
Mayfield, W. C.	Lebanon
Mayhew, D. S.	Monett
Meriwether, H. M.	New England Bldg. Kansas City
Merriam, E. G.	4315 Washington Ave. St. Louis
Mersereau, Geo. J.	1st Nat'l Bank Bldg. Kansas City
Michaels, Wm. C.	906 Commerce Bldg. Kansas City
Miller, Arthur.	1200 Gloyd Bldg. Kansas City
Miller, Charles M.	1127 Scarritt Bldg. Kansas City
Miller, Edw. T.	Frisco Bldg. St. Louis
Miller, Franklin.	Pierce Bldg. St. Louis
Miller, Victor J.	Bank of Commerce Bldg. St. Louis
Mills, John C.	Kirksville
Minnis, Jas. L.	Title Guaranty Bldg. St. Louis
Mitchell, Sam A.	Mercantile Trust Co. St. Louis
Mohr, Frank A.	3rd Nat'l Bank Bldg. St. Louis
Moloney, Robert E.	Bank of Commerce Bldg. St. Louis

Monegan, J. E. (Mrs.)	6015 Berlin Ave.	St. Louis
Montgomery, Lee		Sedalia
Montgomery, Theo. L.		Kahoka
Mooneyham, R. A.		Carthage
Moore, Frank H.	120 West 11th St.	Kansas City
Moore, Geo. H.	Rialto Bldg.	St. Louis
Moore, H. L.		Excelsior Springs
Moore, Hunt C.	906 Republic Bldg.	Kansas City
Moore, John T.		Ozark
Moore, Samuel W.	1st Nat'l Bank Bldg.	Kansas City
Moore, W. R.	1125 Scarritt Bldg.	Kansas City
Morris, A. H.	920 Wainwright Bldg.	St. Louis
Morris, John T.		Carrollton
Morrison, Edwin R.	508 Scarritt Bldg.	Kansas City
Morrow, Thos. R.	1st Nat'l Bank Bldg.	Kansas City
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Nall, Frank B.	Central Nat'l Bank Bldg.	St. Louis
Nardin, Wm. T.	Boatmen's Bank Bldg.	St. Louis
Neale, Ben M.		Greenfield
Neeper, F. W.	206-A Center St.	Hannibal
Nelson, Earl F.		Jefferson City
Neun, Walter J. G.	Nat'l Bank of Commerce Bldg.	St. Louis
Neville, James T.		Springfield
New, Alexander	1200 Gloyd Bldg.	Kansas City
Newman, Charles F.		Kansas City
Newton, Cleveland A.	Security Bldg.	St. Louis
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North, Ed. S.	1127 Scarritt Bldg.	Kansas City
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O'Brien, Arthur A.	901 Republic Bldg.	Kansas City
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O'Donnell, Martin J.	1000 New York Life Bldg.	Kansas City
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Oliver, Arthur L.	U. S. Custom House
Oliver, R. B.	Cape Girardeau
Oliver, R. B., Jr.	Cape Girardeau
O'Rear, John D.	Mexico
Orr, Isaac H.	St. Louis Union Trust Co.
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Orthwein, W. R.	Commercial Bldg.
Overall, John H.	Rialto Bldg.
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Palmer, Clarence S.	836 New York Life Bldg.
Parks, Peyton A.	Clinton
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Pettingill, N. M.	Memphis
Phillips, Alroy S.	Pierce Bldg.
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Piatt, Wm. H. H.	715 Commerce Bldg.
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Pope, H. C.	301 Massachusetts Bldg.
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Powell, Elmer N.	614 New York Life Bldg.
Powell, Walter A.	614 New York Life Bldg.
Powers, Charles A.	Central Nat'l Bank Bldg.
Priest, Geo. T.	New Bank of Commerce Bldg.
Priest, Henry S.	New Bank of Commerce Bldg.
Priest, W. Blodgett.	New Bank of Commerce Bldg.
Proctor, David	431 Scarritt Bldg.
Pufahl, Herman	Bolivar
Randolph, Kendall B.	St. Joseph
Rassieur, Leo S.	St. Louis
Rassieur, Theo.	Federal Reserve Bank Bldg.

Reed, James A.	609 Rialto Bldg.	Kansas City
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Rice, Leslie D.		Neosho
Rich, John A.		Slater
Rieger, J. C.	900 New York Life Bldg.	Kansas City
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Riley, Henry C., Sr.		New Madrid
Ringolsky, I. J.	331 Scarritt Bldg.	Kansas City
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Robinson, Omar E.	1208 Commerce Bldg.	Kansas City
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Rodgers, R. D.		Mexico
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Rogers, Stephen C.	Carleton Bldg.	St. Louis
Rosenberger, Emil P.		Montgomery City
Rosenberger, J. C.	1010 New York Life Bldg.	Kansas City
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Rozier, Welton H.	Pierce Bldg.	St. Louis
Rozzelle, F. F.	927 New York Life Bldg.	Kansas City
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Rucker, Roy W.		Keytesville
Russell, Joe J.		Charleston
Russell, W. C.		Charleston
Rutledge, Thos. G.	Central Nat'l Bank Bldg.	St. Louis
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Ryan, Thos. F.		St. Joseph
Sale, Moses N.	New Bank of Commerce Bldg.	St. Louis
Sanderson, Judson		Fulton
Saunders, Walter H.	Bank of Commerce Bldg.	St. Louis

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Scarritt, W. C.	Scarritt Bldg.	Kansas City
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Schnurmacher, Benj.	Bank of Commerce Bldg.	St. Louis
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Schofield, F. L.	Hannibal
Scott, Rufe	Galena
Sea, John A.	Independence
Sebree, Frank P.	809 Scarritt Bldg.	Kansas City
Sebree, Geo. M.	Woodruff Bldg.	Springfield
Sebree, Sam B.	809 Scarritt Bldg.	Kansas City
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Seibert, Wilson W.	Bank of Commerce Bldg.	St. Louis
Selph, Colin M.	Post Office Bldg.	St. Louis
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Setzler, Edw. A.	1319 Commerce Bldg.	Kansas City
Shain, Hopkins B.	Sedalia
Shanklin, Arnold	City of Mexico
Shelton, Nat M.	Macon
Shepley, Arthas B.	Security Bldg.	St. Louis
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Shields, Geo. H.	Title Guaranty Bldg.	St. Louis
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Silvers, E. B.	Butler
Simrall, Denny	1119 Commerce Bldg.	Kansas City
Simrall, Jas. S.	210 Leonard St.	Liberty
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Skinker, Thos. K.	Pierce Bldg.	St. Louis
Small, C. E.	New York Life Bldg.	Kansas City
Small, Harold R.	Pierce Bldg.	St. Louis
Smart, James C.	816 Grand Ave. Temple Bldg.	Kansas City
Smith, A. F.	906 Republic Bldg.	Kansas City
Smith, Hugh C.	1003 Republic Bldg.	Kansas City
Smith, Luther Ely.	Pierce Bldg.	St. Louis
Smith, T. J.	Butler
Snider, E. L.	909 Sharp Bldg.	Kansas City
Spalding, Elliott	St. Joseph
Sparrow, Samuel	908 Gloyd Bldg.	Kansas City
Spencer, A. E.	516 Frisco Bldg.	Joplin

Spencer, O. M.		St. Joseph
Spencer, R. L.	Corby-Forsee Bldg.	St. Joseph
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Spencer, Selden P.	Commonwealth Trust Bldg.	St. Louis
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Spradling, A. M.		Jackson
Sprague, H. E.	3rd Nat'l Bank Bldg.	St. Louis
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Stark, Charles B.	1816 3rd Nat'l Bank Bldg.	St. Louis
Stewart, A. P.		St. Louis
Stewart, Charles D.		Edina
Stewart, Joseph D.		Chillicothe
Stewart, Robt. F.		Webb City
Stocking, W. L.	567 Sheidley Bldg.	Kansas City
Stocks, S. D.		Mexico
Stone, Kimbrough	Court House.	Independence
Stone, Wm. J.		Jefferson City
Strother, Sam B.	908 Scarritt Bldg.	Kansas City
Sturdevant, W. L.	Central Nat'l Bank Bldg.	St. Louis
Sturgis, Samuel B.		Leeton
Suddath, J. W.		Warrensburg
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Sullivan, Frank H.	3rd Nat'l Bank Bldg.	St. Louis
Swarts, S. L.	3rd Nat'l Bank Bldg.	St. Louis
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Taylor, Daniel C.	Boatmen's Bank Bldg.	St. Louis
Taylor, James A.	921 Scarritt Bldg.	Kansas City
Taylor, James S.	New York Life Bldg.	Kansas City
Taylor, John H.		Chillicothe
Taylor, Seneca N.	Pierce Bldg.	St. Louis
Ten Broeck, Gerritt H.	Mercantile Bldg.	St. Louis
Thomas, Spencer M.	Pierce Bldg.	St. Louis
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Thompson, Guy A.	3rd Nat'l Bank Bldg.	St. Louis
Thompson, Wm. B.	Merchants Laclede Bldg.	St. Louis
Thurmond, W. R.	803 R. A. Long Bldg.	Kansas City
Tillman, J. B.		Carthage
Timmonds, H. W.		Lamar
Titue, Frank	901 New York Life Bldg.	Kansas City
Todd, Ben E.	718 Commerce Bldg.	Kansas City
Todd, Joseph B.		Springfield
Troll, Harry	Central Nat'l Bank Bldg.	St. Louis
Turpin, Rees	934 New York Life Bldg.	Kansas City
Vierling, Frederick	Mississippi Valley Trust Co.	St. Louis

Vineyard, J. J.	927 New York Life Bldg.	Kansas City
Wagner, Hugh K.	Fullerton Bldg.	St. Louis
Wagner, Thos. H.	Pierce Bldg.	St. Louis
Walker, A. W.		Fayette
Walker, Lee		Columbia
Wallace, Wm. H.	1014 New York Life Bldg.	Kansas City
Waller, Alexander H.		Moberly
Walsh, Edw. P.	3901 Park Ave.	St. Louis
Walther, Lambert E.	Title Guaranty Bldg.	St. Louis
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Wammack, Ralph		Bloomfield
Wanamaker, Geo W.		Bethany
Ward, R. E.		Liberty
Ward, Robert L.		Caruthersville
Watson, Drake		New London
Welborn, A. T.		Bloomfield
Wendorf, John D.	809 Scarritt Bldg.	Kansas City
Werner, Percy	Rialto Bldg.	St. Louis
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Wheless, Joseph	Carleton Bldg.	St. Louis
White, Benj. L.		Marceline
White, Edw. J.	R. A. Long Bldg.	Kansas City
White, Thos. W.	3rd Nat'l Bank Bldg.	St. Louis
Whitecotton, J. H.		Moberly
Whiteside, John A.	Hiller Bldg.	Kahoka
Whitledge, T. B.		St. Marys
Whitsitt, Andrew A.		Harrisonville
Whybark, Moses		Cape Girardeau
Wieman, Herman F.	704 New York Life Bldg.	Kansas City
Wilfley, X. P.	Boatmen's Bank Bldg.	St. Louis
Williams, Charles B.	3rd Nat'l Bank Bldg.	St. Louis
Williams, Charles P.	Security Bldg.	St. Louis
Williams, Fred L.		Jefferson City
Williams, Geo. H.	Pierce Bldg.	St. Louis
Williams, Isaac R.		Savannah
Williams, Jas. C.	New York Life Bldg.	Kansas City
Williams, John M.		California
Williams, Roy D.		Boonville
Williams, Tyrrell	Washington University	St. Louis
Williamson, John I.	818 Scarritt Bldg.	Kansas City
Wilson, F. M.	U. S. Dist. Atty.	Kansas City
Wilson, John E.	721 Commerce Bldg.	Kansas City
Windsor, John H.		Boonville
Winger, M. H.	1200 Gloyd Bldg.	Kansas City

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Wood, Ben A.....	Rialto Bldg.....	St. Louis
Wood, Fred H.....	165 Broadway.....	New York City
Wood, John M.....	802 Merchants Laclede Bldg.....	St. Louis
Wood, W. W.....		Humansville
Woodruff, W. F.....	306 Keith & Perry Bldg.....	Kansas City
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Yount, Garry H.....		Van Buren
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